

Calendar No. 431

104TH CONGRESS
2^D Session

H. R. 3268

AN ACT

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

JUNE 11, 1996

Received; read twice and placed on the calendar

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AN ACT

To amend the Individuals with Disabilities Education Act,
to reauthorize and make improvements to that Act, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “IDEA Improvement
3 Act of 1996”.

4 **TITLE I—AMENDMENTS TO THE**
5 **INDIVIDUALS WITH DISABIL-**
6 **ITIES EDUCATION ACT**

7 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
8 **ABILITIES EDUCATION ACT.**

9 Parts A through D of the Individuals with Disabil-
10 ities Education Act (20 U.S.C. 1400 et seq.) are amended
11 to read as follows:

12 **“PART A—GENERAL PROVISIONS**

13 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
14 **PURPOSES.**

15 “(a) **SHORT TITLE.**—This title may be cited as the
16 ‘Individuals with Disabilities Education Act’.

17 “(b) **TABLE OF CONTENTS.**—The table of contents
18 for this title is as follows:

“PART A—GENERAL PROVISIONS

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Requirements for prescribing regulations.

“Sec. 606. Employment of individuals with disabilities.

**“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH
DISABILITIES**

“Sec. 611. Authorization; allotment; use of funds; authorization of appro-
priations.

“Sec. 612. State requirements.

“Sec. 613. Local educational agency requirements.

- “Sec. 614. Evaluations, reevaluations, individualized education programs, and educational placements.
- “Sec. 615. Procedural safeguards.
- “Sec. 616. Withholding and judicial review.
- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

- “Sec. 631. Findings and policy.
- “Sec. 632. Definitions.
- “Sec. 633. General authority.
- “Sec. 634. Eligibility.
- “Sec. 635. Requirements for Statewide system.
- “Sec. 636. Individualized family service plan.
- “Sec. 637. State application and assurances.
- “Sec. 638. Uses of funds.
- “Sec. 639. Procedural safeguards.
- “Sec. 640. Payor of last resort.
- “Sec. 641. State interagency coordinating council.
- “Sec. 642. Federal administration.
- “Sec. 643. Allocation of funds.
- “Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

- “Sec. 651. Purpose of part.
- “Sec. 652. Eligibility for financial assistance.
- “Sec. 653. Comprehensive plan.
- “Sec. 654. Peer review.
- “Sec. 655. Eligible applicants.
- “Sec. 656. Applicant and recipient responsibilities.
- “Sec. 657. Indirect costs.
- “Sec. 658. Program evaluation.

“SUBPART 1—NATIONAL RESEARCH AND IMPROVEMENT ACTIVITIES

- “Sec. 661. General authority to make awards.
- “Sec. 662. Priorities.
- “Sec. 663. National assessment.
- “Sec. 664. Authorization of appropriations.

“SUBPART 2—PROFESSIONAL DEVELOPMENT

- “Sec. 671. Purpose.
- “Sec. 672. Finding.
- “Sec. 673. National activities.
- “Sec. 674. Professional development for personnel serving low-incidence populations.
- “Sec. 675. Leadership personnel.
- “Sec. 676. Service obligation.
- “Sec. 677. Outreach.

“SUBPART 3—STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH
DISABILITIES

- “Sec. 681. Purpose.
- “Sec. 682. Eligibility and collaborative process.
- “Sec. 683. State improvement plans.
- “Sec. 684. Use of funds.
- “Sec. 685. Minimum State allotments.
- “Sec. 686. Authorization of appropriations.

“SUBPART 4—PARENT TRAINING

- “Sec. 691. Grants for parent training and information centers.
- “Sec. 692. Technical assistance for parent training and information centers.
- “Sec. 693. Authorization of appropriations.

1 “(c) FINDINGS.—The Congress finds the following:

2 “(1) Disability is a natural part of the human
3 experience and in no way diminishes the right of in-
4 dividuals to participate in or contribute to society.
5 Improving educational results for children with dis-
6 abilities is an essential element of our national policy
7 of ensuring equality of opportunity, full participa-
8 tion, independent living, and economic self-suffi-
9 ciency for individuals with disabilities.

10 “(2) Before the date of the enactment of the
11 Education for All Handicapped Children Act of
12 1975 (Public Law 94–142)—

13 “(A) the special educational needs of chil-
14 dren with disabilities were not being fully met;

15 “(B) more than one-half of the children
16 with disabilities in the United States did not re-
17 ceive appropriate educational services that

1 would enable such children to have full equality
2 of opportunity;

3 “(C) 1,000,000 of the children with dis-
4 abilities in the United States were excluded en-
5 tirely from the public school system and did not
6 go through the educational process with their
7 peers;

8 “(D) there were many children with dis-
9 abilities throughout the United States partici-
10 pating in regular school programs whose dis-
11 abilities prevented such children from having a
12 successful educational experience because their
13 disabilities were undetected; and

14 “(E) because of the lack of adequate serv-
15 ices within the public school system, families
16 were often forced to find services outside the
17 public school system, often at great distance
18 from their residence and at their own expense.

19 “(3) Since the enactment and implementation
20 of the Education for All Handicapped Children Act
21 of 1975, this Act has been successful in ensuring
22 children with disabilities and the families of such
23 children access to a free appropriate public edu-
24 cation and in improving educational results for chil-
25 dren with disabilities.

1 “(4) However, the implementation of this Act
2 has been impeded by low expectations, and an insuf-
3 ficient focus on applying replicable research on prov-
4 en methods of teaching and learning for children
5 with disabilities.

6 “(5) 20 years of research and experience has
7 demonstrated that the education of children with
8 disabilities can be made more effective by—

9 “(A) having high expectations for such
10 children and ensuring their access in the gen-
11 eral curriculum to the maximum extent pos-
12 sible;

13 “(B) ensuring that families of such chil-
14 dren have meaningful opportunities to partici-
15 pate in the education of their children at school
16 and at home;

17 “(C) coordinating this Act with other local,
18 educational service agency, State, and Federal
19 school improvement efforts in order to ensure
20 that such children benefit from such efforts and
21 that special education can become a service for
22 such children rather than a place where they
23 are sent;

24 “(D) providing appropriate special edu-
25 cation and related services and aids and sup-

1 ports in the regular classroom to such children,
2 whenever appropriate;

3 “(E) supporting high-quality, intensive
4 professional development for all personnel who
5 work with such children in order to ensure that
6 they have the skills and knowledge necessary to
7 enable them—

8 “(i) to meet developmental goals and,
9 to the maximum extent possible, those
10 challenging expectations that have been es-
11 tablished for all children; and

12 “(ii) to be prepared to lead produc-
13 tive, independent, adult lives, to the maxi-
14 mum extent possible;

15 “(F) providing incentives for whole-school
16 approaches and early intervention to reduce the
17 need to label children as disabled in order to
18 address their learning needs; and

19 “(G) focusing resources on teaching and
20 learning while reducing paperwork and require-
21 ments that do not assist in improving edu-
22 cational results.

23 “(6) While States, local educational agencies,
24 and educational service agencies are responsible for
25 providing an education for all children with disabil-

1 ities, it is in the national interest that the Federal
2 Government have a role in assisting State and local
3 efforts to educate children with disabilities in order
4 to improve results for such children and to ensure
5 equal protection of the law.

6 “(7)(A) The Federal Government must be re-
7 sponsive to the growing needs of an increasingly
8 more diverse society. A more equitable allocation of
9 resources is essential for the Federal Government to
10 meet its responsibility to provide an equal edu-
11 cational opportunity for all individuals.

12 “(B) America’s racial profile is rapidly chang-
13 ing. Between 1980 and 1990, the rate of increase in
14 the population for white Americans was 6 percent,
15 while the rate of increase for racial and ethnic mi-
16 norities was much higher: 53 percent for Hispanics,
17 13.2 percent for African-Americans, and 107.8 per-
18 cent for Asians.

19 “(C) By the year 2000, this Nation will have
20 275,000,000 people, nearly one of every three of
21 whom will be either African-American, Hispanic,
22 Asian-American, or American Indian.

23 “(D) Taken together as a group, minority chil-
24 dren are comprising an ever larger percentage of
25 public school students. Large city school populations

1 are overwhelmingly minority, e.g., for fall 1993, the
2 figure for Miami was 84 percent; Chicago, 89 per-
3 cent; Philadelphia, 78 percent; Baltimore, 84 per-
4 cent; Houston, 88 percent; and Los Angeles, 88 per-
5 cent.

6 “(E) Recruitment efforts within special edu-
7 cation at the level of preservice, continuing edu-
8 cation, and practice must focus on bringing larger
9 numbers of minorities into the profession in order to
10 provide appropriate practitioner knowledge, role
11 models, and sufficient manpower to address the
12 clearly changing demography of special education.

13 “(F) The limited English proficient population
14 is the fastest growing in our Nation, and the growth
15 is occurring in many parts of our Nation. In the Na-
16 tion’s 2 largest school districts, limited English stu-
17 dents make up almost half of all students initially
18 entering school at the kindergarten level. Studies
19 have documented apparent discrepancies in the levels
20 of referral and placement of limited English pro-
21 ficient children in special education. The Depart-
22 ment of Education has found that services provided
23 to limited English proficient students often do not
24 respond primarily to the pupil’s academic needs.
25 These trends pose special challenges for special edu-

1 cation in the referral, assessment, and services for
2 our Nation's students from non-English language
3 backgrounds.

4 “(8)(A) Greater efforts are needed to prevent
5 the intensification of problems connected with
6 mislabeling and high dropout rates among minority
7 children with disabilities.

8 “(B) More minority children continue to be
9 served in special education than would be expected
10 from the percentage of minority students in the gen-
11 eral school population.

12 “(C) Poor African-American children are 3.5
13 times more likely to be identified by their teacher as
14 mentally retarded than their white counterpart.

15 “(D) Although African-Americans represent 12
16 percent of elementary and secondary enrollments,
17 they constitute 28 percent of total enrollments in
18 special education.

19 “(E) The drop out rate is 68 percent higher for
20 minorities than for whites.

21 “(F) More than 50 percent of minority students
22 in large cities drop out of school.

23 “(9)(A) The opportunity for full participation
24 in awards for grants and contracts; boards of orga-
25 nizations receiving funds under this Act; and peer

1 review panels; and training of professionals in the
2 area of special education by minority individuals, or-
3 ganizations, and historically Black colleges and uni-
4 versities is essential if we are to obtain greater suc-
5 cess in the education of minority children with dis-
6 abilities.

7 “(B) In 1989, of the 661,000 college and uni-
8 versity professors, 4.6 percent were African-Amer-
9 ican and 3.1 percent were Hispanic. Of the
10 3,600,000 teachers, prekindergarten through high
11 school, 9.4 percent were African-American and 3.9
12 percent were Hispanic.

13 “(C) Students from minority groups comprise
14 more than 50 percent of K–12 public school enroll-
15 ment in seven States yet minority enrollment in
16 teacher training programs is less than 15 percent in
17 all but six States.

18 “(D) As the number of African-American and
19 Hispanic students in special education increases, the
20 number of minority teachers and related service per-
21 sonnel produced in our colleges and universities con-
22 tinues to decrease.

23 “(E) Ten years ago, 12.5 percent of the United
24 States teaching force in public elementary and sec-
25 ondary schools were members of a minority group.

1 Minorities comprised 21.3 percent of the national
2 population at that time and were clearly underrep-
3 resented then among employed teachers. Today, the
4 elementary and secondary teaching force is 3 to 5
5 percent minority, while one-third of the students in
6 public schools are minority children.

7 “(F) As recently as 1991, Historically Black
8 Colleges and Universities enrolled 44 percent of the
9 African-American teacher trainees in the Nation.
10 However, in 1993, Historically Black Colleges and
11 Universities received only 4 percent of the discre-
12 tionary funds for special education and related serv-
13 ices personnel training under this Act.

14 “(G) While African-American students con-
15 stitute 28 percent of total enrollment in special edu-
16 cation, only 11.2 percent of individuals enrolled in
17 preservice training programs for special education
18 are African-American.

19 “(H) In 1986–87, of the degrees conferred in
20 education at the B.A., M.A., and Ph.D levels, only
21 6, 8, and 8 percent, respectively, were awarded to
22 African-American or Hispanic students.

23 “(10) Minorities and underserved persons are
24 socially disadvantaged because of the lack of oppor-
25 tunities in training and educational programs,

1 undergirded by the practices in the private sector
2 that impede their full participation in the main-
3 stream of society.

4 “(d) PURPOSES.—The purposes of this title are—

5 “(1) to ensure that all children with disabilities
6 have available to them a free appropriate public edu-
7 cation that emphasizes special education and related
8 services designed to meet their unique needs and
9 prepare them for employment and independent liv-
10 ing;

11 “(2) to ensure that the rights of children with
12 disabilities and parents of such children are pro-
13 tected;

14 “(3) to assist States, localities, education serv-
15 ice agencies, and Federal agencies to provide for the
16 education of all children with disabilities; and

17 “(4) to assess, and ensure the effectiveness of,
18 efforts to educate children with disabilities.

19 **“SEC. 602. DEFINITIONS.**

20 “As used in this title:

21 “(1) ASSISTIVE TECHNOLOGY DEVICE.—The
22 term ‘assistive technology device’ means any item,
23 piece of equipment, or product system, whether ac-
24 quired commercially off the shelf, modified, or cus-
25 tomized, that is used to increase, maintain, or im-

1 prove functional capabilities of a child with a disabil-
2 ity.

3 “(2) ASSISTIVE TECHNOLOGY SERVICE.—The
4 term ‘assistive technology service’ means any service
5 that directly assists a child with a disability in the
6 selection, acquisition, or use of an assistive tech-
7 nology device. Such term includes—

8 “(A) the evaluation of the needs of such
9 child, including a functional evaluation of the
10 child in the child’s customary environment;

11 “(B) purchasing, leasing, or otherwise pro-
12 viding for the acquisition of assistive technology
13 devices by such child;

14 “(C) selecting, designing, fitting, customiz-
15 ing, adapting, applying, maintaining, repairing,
16 or replacing of assistive technology devices;

17 “(D) coordinating and using other thera-
18 pies, interventions, or services with assistive
19 technology devices, such as those associated
20 with existing education and rehabilitation plans
21 and programs;

22 “(E) training or technical assistance for
23 such child, or, where appropriate, the family of
24 such child; and

1 “(F) training or technical assistance for
2 professionals (including individuals providing
3 education and rehabilitation services), employ-
4 ers, or other individuals who provide services to,
5 employ, or are otherwise substantially involved
6 in the major life functions of such child.

7 “(3) CHILD WITH A DISABILITY.—

8 “(A) IN GENERAL.—The term ‘child with a
9 disability’ means a child—

10 “(i) with mental retardation, hearing
11 impairments (including deafness), speech
12 or language impairments, visual impair-
13 ments (including blindness), serious emo-
14 tional disturbance, orthopedic impairments,
15 autism, traumatic brain injury, other
16 health impairments, or specific learning
17 disabilities; and

18 “(ii) who, by reason thereof, needs
19 special education and related services.

20 “(B) CHILD AGED 3 TO 9.—The term
21 ‘child with a disability’ for a child aged 3 to 9,
22 inclusive, may, at the discretion of the State
23 and the local educational agency, include a
24 child—

1 “(i) experiencing developmental
2 delays, as defined by the State and as
3 measured by appropriate diagnostic instru-
4 ments and procedures, in one or more of
5 the following areas: physical development,
6 cognitive development, communication de-
7 velopment, social or emotional develop-
8 ment, or adaptive development; and

9 “(ii) who, by reason thereof, needs
10 special education and related services.

11 “(4) EDUCATIONAL SERVICE AGENCY.—The
12 term ‘educational service agency’—

13 “(A) means a regional public multiservice
14 agency—

15 “(i) authorized by State law to de-
16 velop, manage, and provide services or pro-
17 grams to local educational agencies; and

18 “(ii) recognized as an administrative
19 agency for purposes of the provision of
20 special education and related services pro-
21 vided within public elementary and second-
22 ary schools of the State; and

23 “(B) includes any other public institution
24 or agency having administrative control and di-

1 rection over a public elementary or secondary
2 school.

3 “(5) ELEMENTARY SCHOOL.—The term ‘ele-
4 mentary school’ means a day or residential school
5 which provides elementary education, as determined
6 under State law, policy, or procedure.

7 “(6) EQUIPMENT.—The term ‘equipment’ in-
8 cludes—

9 “(A) machinery, utilities, and built-in
10 equipment and any necessary enclosures or
11 structures to house such machinery, utilities, or
12 equipment; and

13 “(B) all other items necessary for the
14 functioning of a particular facility as a facility
15 for the provision of educational services, includ-
16 ing items such as instructional equipment and
17 necessary furniture, printed, published, and
18 audio-visual instructional materials, tele-
19 communications, sensory, and other techno-
20 logical aids and devices, and books, periodicals,
21 documents, and other related materials.

22 “(7) EXCESS COSTS.—The term ‘excess costs’
23 means those costs which are in excess of the average
24 annual per student expenditure in a local edu-
25 cational agency during the preceding school year for

1 an elementary or secondary school student, as may
 2 be appropriate, and which shall be computed after
 3 deducting—

4 “(A) amounts received—

5 “(i) under part B of this title;

6 “(ii) under part A of title I of the El-
 7 ementary and Secondary Education Act of
 8 1965; or

9 “(iii) under part A of title VII of such
 10 Act; and

11 “(B) any State or local funds expended for
 12 programs that would qualify for assistance
 13 under any such part.

14 “(8) FREE APPROPRIATE PUBLIC EDU-
 15 CATION.—The term ‘free appropriate public edu-
 16 cation’ means special education and related services
 17 that—

18 “(A) have been provided at public expense,
 19 under public supervision and direction, and
 20 without charge;

21 “(B) meet the standards of the State edu-
 22 cational agency;

23 “(C) include an appropriate preschool, ele-
 24 mentary, or secondary school education in the
 25 State involved; and

1 “(D) are provided in conformity with the
2 individualized education program required
3 under section 614(d).

4 “(9) INDIAN.—The term ‘Indian’ means an in-
5 dividual who is a member of an Indian tribe.

6 “(10) INDIAN TRIBE.—The term ‘Indian tribe’
7 means any Federal or State Indian tribe, band,
8 rancheria, pueblo, colony, or community, including
9 any Alaskan native village or regional village cor-
10 poration (as defined in or established under the
11 Alaska Native Claims Settlement Act).

12 “(11) INDIVIDUALIZED EDUCATION PRO-
13 GRAM.—The term ‘individualized education program’
14 or ‘IEP’ means a written statement for each child
15 with a disability that is developed, reviewed, and re-
16 vised in accordance with section 614(d) and that in-
17 cludes—

18 “(A) a statement of the child’s present lev-
19 els of educational performance, including—

20 “(i) how the child’s disability affects
21 the child’s involvement and progress in the
22 general curriculum; or

23 “(ii) for preschool children, as appro-
24 priate, how the disability affects the child’s
25 participation in appropriate activities;

1 “(B) a statement of measurable annual
2 goals, including benchmarks or short-term ob-
3 jectives, related to—

4 “(i) meeting the child’s needs that re-
5 sult from the child’s disability to enable
6 the child to be involved in and progress in
7 the general curriculum; and

8 “(ii) meeting each of the child’s other
9 educational needs that result from the
10 child’s disability;

11 “(C) a statement of how the classroom was
12 adapted before the student was referred for
13 identification as a child with a disability;

14 “(D) a justification of the extent, if any, to
15 which the child will not be educated with non-
16 disabled children;

17 “(E) a statement of the special education
18 and related services and supplementary aids
19 and services to be provided to the child, or on
20 behalf of the child, and any program modifica-
21 tions or support for school personnel necessary
22 for the child—

23 “(i) to progress toward the attainment
24 of the annual goals described in subpara-
25 graph (B); and

1 “(ii) to be involved and progress in
2 the general curriculum in accordance with
3 subparagraph (A) and to participate in ex-
4 tracurricular and other nonacademic activi-
5 ties;

6 “(F)(i) a statement of any individual modi-
7 fications in the administration of State or dis-
8 trictwide assessments of student achievement
9 that are needed in order for the child to partici-
10 pate in such assessment; and

11 “(ii) if the individualized education pro-
12 gram team determines that the child will not
13 participate in a particular State or districtwide
14 assessment of student achievement (or part of
15 such an assessment), a statement of—

16 “(I) why that assessment is not ap-
17 propriate for the child; and

18 “(II) how the child will be assessed;

19 “(G) the projected date for the beginning
20 of the services and modifications described in
21 subparagraph (E), and the anticipated fre-
22 quency, location, and duration of those services
23 and modifications;

24 “(H)(i) beginning at age 14, and updated
25 annually, a statement of the transition service

1 needs of the child under the applicable compo-
2 nents of the child's IEP that focuses on the
3 child's courses of study (such as participation
4 in advanced-placement courses or a vocational
5 education or school-to-work program);

6 “(ii) beginning at age 16 (or younger, if
7 determined appropriate by the IEP Team), a
8 statement of needed transition services for the
9 child, including, when appropriate, a statement
10 of the interagency responsibilities or any needed
11 linkages; and

12 “(iii) beginning at least one year before the
13 child reaches the age of majority under State
14 law, a statement that the child has been in-
15 formed of his or her rights under this title, if
16 any, that will transfer to the child on reaching
17 the age of majority under section 615(m); and

18 “(I) a statement of—

19 “(i) how the child's progress toward
20 the annual goals described in subpara-
21 graph (B) will be measured; and

22 “(ii) how the child's parents will be
23 regularly informed (by such means as peri-
24 odic report cards), at least as often as par-

1 ents are informed of their nondisabled chil-
2 dren’s progress, of—

3 “(I) their child’s progress toward
4 the annual goals described in subpara-
5 graph (B); and

6 “(II) the extent to which that
7 progress is sufficient to enable the
8 child to achieve the objectives by the
9 end of the year.

10 “(12) INDIVIDUALIZED EDUCATION PROGRAM
11 TEAM.—The term ‘individualized education program
12 team’ or ‘IEP Team’ means a group of individuals
13 composed of—

14 “(A) the parents of a child with a disabil-
15 ity;

16 “(B) at least one regular education teacher
17 of such child (if the child is, or may be, partici-
18 pating in the regular education environment);

19 “(C) at least one special education teacher,
20 or where appropriate, at least one special edu-
21 cation provider of such child;

22 “(D) a representative of the local edu-
23 cational agency who—

24 “(i) is qualified to provide, or super-
25 vise the provision of, specially designed in-

1 instruction to meet the unique needs of chil-
2 dren with disabilities;

3 “(ii) is knowledgeable about the gen-
4 eral curriculum; and

5 “(iii) is knowledgeable about the avail-
6 ability of resources of the local educational
7 agency;

8 “(E) whenever appropriate, the child with
9 a disability; and

10 “(F) at the discretion of the parent or the
11 agency, other individuals who have special ex-
12 pertise or knowledge regarding the abilities and
13 disability or disabilities of the child, including,
14 as appropriate, related services personnel who
15 are or who will be working with the child.

16 “(13) INSTITUTION OF HIGHER EDUCATION.—
17 The term ‘institution of higher education’—

18 “(A) has the meaning given that term in
19 section 1201(a) of the Higher Education Act of
20 1965; and

21 “(B) also includes any community college
22 receiving funding from the Secretary of the In-
23 terior under the Tribally Controlled Community
24 College Assistance Act of 1978.

1 “(14) LOCAL EDUCATIONAL AGENCY.—The
2 term ‘local educational agency’ means—

3 “(A) a public board of education or other
4 public authority legally constituted within a
5 State for either administrative control or direc-
6 tion of, or to perform a service function for,
7 public elementary or secondary schools in a
8 city, county, township, school district, or other
9 political subdivision of a State, or for a com-
10 bination of school districts or counties as are
11 recognized in a State as an administrative
12 agency for its public elementary or secondary
13 schools;

14 “(B) any other public institution or agency
15 having administrative control and direction of a
16 public elementary or secondary school; or

17 “(C) an educational service agency.

18 “(15) NATIVE LANGUAGE.—The term ‘native
19 language’, when used with reference to an individual
20 of limited English proficiency, means the language
21 normally used by the individual, or in the case of a
22 child, the language normally used by the parents of
23 the child, and includes American Sign Language.

24 “(16) NONPROFIT.—The term ‘nonprofit’ as
25 applied to a school, agency, organization, or institu-

tion means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

“(17) PARENT.—The term ‘parent’ includes a legal guardian or surrogate parent.

“(18) PARENT ORGANIZATION.—The term ‘parent organization’ means a private nonprofit organization (but not including an institution of higher education) that—

“(A) has a board of directors—

“(i) the majority of whom are parents of children with disabilities;

“(ii) that includes—

“(I) individuals working in the fields of special education, related services, and early intervention; and

“(II) individuals with disabilities;

and

“(iii) the parent and professional members of which are broadly representative of the population to be served; or

“(B)(i) represents the interests of individuals with disabilities and has established a spe-

1 cial governing committee which meets the re-
2 quirements of subparagraph (A); and

3 “(ii) has a memorandum of understanding
4 between the special governing committee and
5 the board of directors of the organization which
6 clearly outlines the relationship between the
7 board and the committee and the decisionmak-
8 ing responsibilities and authority of each.

9 “(19) PARENT TRAINING AND INFORMATION
10 CENTER.—The term ‘parent training and informa-
11 tion center’ means a center that—

12 “(A) provides training and information
13 that meets the training and information needs
14 of parents of children with disabilities living in
15 the area served by the center; and

16 “(B) assists parents—

17 “(i) to better understand the nature
18 of their children’s disabilities and their
19 educational and developmental needs;

20 “(ii) to communicate effectively with
21 personnel responsible for providing special
22 education, early intervention, and related
23 services;

24 “(iii) to participate in decisionmaking
25 processes and the development of the IEP;

1 “(iv) to obtain appropriate informa-
2 tion about the range of options, programs,
3 services, and resources available to assist
4 children with disabilities and their families;

5 “(v) to understand the programs
6 under this title for the education of, and
7 the provision of early intervention services
8 to, children with disabilities; and

9 “(vi) to participate in school reform
10 activities.

11 “(20) RELATED SERVICES.—The term ‘related
12 services’ means transportation, and such devel-
13 opmental, corrective, and other supportive services
14 (including speech-language pathology and audiology
15 services, psychological services, physical and occupa-
16 tional therapy, recreation, including therapeutic
17 recreation, social work services, counseling services,
18 including rehabilitation counseling, orientation and
19 mobility services, and medical services, except that
20 such medical services shall be for diagnostic and
21 evaluation purposes only) as may be required to as-
22 sist a child with a disability to benefit from special
23 education, and includes the early identification and
24 assessment of disabling conditions in children.

1 “(21) SECONDARY SCHOOL.—The term ‘second-
2 ary school’ means a day or residential school which
3 provides secondary education, as determined under
4 State law, policy, or procedure, except that it does
5 not include any education provided beyond grade 12.

6 “(22) SECRETARY.—The term ‘Secretary’
7 means the Secretary of Education.

8 “(23) SPECIAL EDUCATION.—The term ‘special
9 education’ means specially designed instruction, at
10 no cost to parents, to meet the unique needs of a
11 child with a disability, including—

12 “(A) instruction conducted in the class-
13 room, in the home, in hospitals and institutions,
14 and in other settings; and

15 “(B) instruction in physical education.

16 “(24) SPECIFIC LEARNING DISABILITY.—

17 “(A) IN GENERAL.—The term ‘specific
18 learning disability’ means a disorder in one or
19 more of the basic psychological processes in-
20 volved in understanding or in using language,
21 spoken or written, which disorder may manifest
22 itself in imperfect ability to listen, think, speak,
23 read, write, spell, or do mathematical calcula-
24 tions.

1 “(B) DISORDERS INCLUDED.—Such term
2 includes such conditions as perceptual disabil-
3 ities, brain injury, minimal brain dysfunction,
4 dyslexia, and developmental aphasia.

5 “(C) DISORDERS NOT INCLUDED.—Such
6 term does not include a learning problem that
7 is primarily the result of visual, hearing, or
8 motor disabilities, of mental retardation, of
9 emotional disturbance, or of environmental, cul-
10 tural, or economic disadvantage.

11 “(25) STATE.—The term ‘State’ means each of
12 the 50 States, the District of Columbia, the Com-
13 monwealth of Puerto Rico, and each of the terri-
14 tories.

15 “(26) STATE EDUCATIONAL AGENCY.—The
16 term ‘State educational agency’ means the State
17 board of education or other agency or officer pri-
18 marily responsible for the State supervision of public
19 elementary and secondary schools, or, if there is no
20 such officer or agency, an officer or agency des-
21 ignated by the Governor or by State law.

22 “(27) SUPPLEMENTARY AIDS AND SERVICES.—
23 The term ‘supplementary aids and services’ means,
24 aids, services, and other supports that are provided
25 in regular education classes or other education-relat-

1 ed settings to enable children with disabilities to be
2 educated with nondisabled children to the maximum
3 extent appropriate in accordance with section
4 612(a)(4).

5 “(28) TERRITORY.—The term ‘territory’ means
6 American Samoa, the Commonwealth of the North-
7 ern Mariana Islands, Guam, and the Virgin Islands.

8 “(29) TRANSITION SERVICES.—The term ‘tran-
9 sition services’ means a coordinated set of activities
10 for a child with a disability that—

11 “(A) are designed within an outcome-ori-
12 ented process, which promotes movement from
13 school to post-school activities, including post-
14 secondary education, vocational training, inte-
15 grated employment (including supported em-
16 ployment), continuing and adult education,
17 adult services, independent living, or community
18 participation;

19 “(B) are based upon the individual child’s
20 needs, taking into account the child’s pref-
21 erences and interests; and

22 “(C) include instruction, related services,
23 community experiences, the development of em-
24 ployment and other post-school adult living ob-
25 jectives, and, when appropriate, acquisition of

1 daily living skills and functional vocational eval-
2 uation.

3 **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

4 “(a) ESTABLISHMENT.—There shall be, within the
5 Office of Special Education and Rehabilitative Services in
6 the Department of Education, an Office of Special Edu-
7 cation Programs which shall be the principal agency in
8 such Department for administering and carrying out this
9 title and other programs and activities concerning the edu-
10 cation and training of children with disabilities.

11 “(b) DIRECTOR.—The Office established under sub-
12 section (a) shall be headed by a Director who shall be se-
13 lected by the Secretary and shall report directly to the As-
14 sistant Secretary for Special Education and Rehabilitative
15 Services.

16 “(c) VOLUNTARY AND UNCOMPENSATED SERV-
17 ICES.—Notwithstanding section 1342 of title 31, United
18 States Code, the Secretary is authorized to accept vol-
19 untary and uncompensated services in furtherance of the
20 purposes of this title.

21 **“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

22 “(a) IN GENERAL.—A State shall not be immune
23 under the eleventh amendment to the Constitution of the
24 United States from suit in Federal court for a violation
25 of this title.

1 “(b) REMEDIES.—In a suit against a State for a vio-
 2 lation of this title, remedies (including remedies both at
 3 law and in equity) are available for such a violation to
 4 the same extent as such remedies are available for such
 5 a violation in the suit against any public entity other than
 6 a State.

7 “(c) EFFECTIVE DATE.—The provisions of sub-
 8 sections (a) and (b) apply with respect to violations that
 9 occur in whole or part after the date of the enactment
 10 of the Education of the Handicapped Act Amendments of
 11 1990.

12 **“SEC. 605. REQUIREMENTS FOR PRESCRIBING REGULA-**
 13 **TIONS.**

14 “(a) PUBLIC-COMMENT PERIOD.—The Secretary
 15 shall provide a public-comment period of at least 90 days
 16 on any regulation proposed under part B or part C of this
 17 title on which an opportunity for public comment is other-
 18 wise required by law.

19 “(b) PROTECTIONS PROVIDED TO CHILDREN.—The
 20 Secretary may not implement, or publish in final form,
 21 any regulation prescribed pursuant to this title which
 22 would procedurally or substantively lessen the protections
 23 provided to children with disabilities under this title, as
 24 embodied in regulations in effect on July 20, 1983 (par-
 25 ticularly as such protections relate to parental consent to

1 initial evaluation or initial placement in special education,
2 least restrictive environment, related services, timeliness,
3 attendance of evaluation personnel at individualized edu-
4 cation program meetings, or qualifications of personnel),
5 except to the extent that such regulation reflects the clear
6 and unequivocal intent of the Congress in legislation.

7 “(c) CORRESPONDENCE FROM DEPARTMENT OF
8 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
9 PART.—

10 “(1) IN GENERAL.—The Secretary shall, on a
11 quarterly basis, publish in the Federal Register, and
12 widely disseminate to interested entities through var-
13 ious additional forms of communication, a list of
14 correspondence from the Department of Education
15 received by individuals during the previous quarter
16 that describes the interpretations of the Department
17 of Education of this Act or the regulations imple-
18 mented pursuant to this Act.

19 “(2) ADDITIONAL INFORMATION.—For each
20 item of correspondence published in a list under
21 paragraph (1), the Secretary shall identify the topic
22 addressed by the correspondence and shall include
23 such other summary information as the Secretary
24 determines to be appropriate.

1 “(3) RESTRICTIONS ON USE OF CORRESPOND-
2 ENCE.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), an item of correspondence
5 published and disseminated under paragraph
6 (1) may not be used in the following:

7 “(i) An administrative or due process
8 action commenced under section 615.

9 “(ii) A compliance review or other ac-
10 tion relating to a State educational agency
11 conducted by the Department of Edu-
12 cation.

13 “(iii) A compliance review or other ac-
14 tion relating to a local educational agency
15 or other agency conducted by a State edu-
16 cational agency.

17 “(B) EXCEPTIONS.—A restriction on the
18 use of an item of correspondence under sub-
19 paragraph (A) shall not apply if the item of
20 correspondence—

21 “(i) is directly related to the particu-
22 lar fact situation, practice, or policy at
23 issue under clause (i) or (iii) of subpara-
24 graph (A);

1 “(ii)(I) was originally directed to one
 2 of the parties to the action under subpara-
 3 graph (A)(i); or

4 “(II) was originally directed to the
 5 particular local educational agency or other
 6 agency under subparagraph (A)(iii); or

7 “(iii) was originally directed to the
 8 particular State educational agency under
 9 subparagraph (A)(ii).

10 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
 11 **ITIES.**

12 “The Secretary shall assure that each recipient of as-
 13 sistance under this Act shall make positive efforts to em-
 14 ploy and advance in employment qualified individuals with
 15 disabilities in programs assisted under this Act.

16 **“PART B—ASSISTANCE FOR EDUCATION OF ALL**
 17 **CHILDREN WITH DISABILITIES**

18 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
 19 **AUTHORIZATION OF APPROPRIATIONS.**

20 “(a) AUTHORIZATION.—The Secretary of Education
 21 shall provide grants to States and provide amounts to the
 22 Secretary of the Interior for the purpose of providing spe-
 23 cial education and related services to children with disabil-
 24 ities in accordance with this part.

25 “(b) ALLOTMENT AMONG STATES.—

1 “(1) RESERVATION FOR THE TERRITORIES.—

2 “(A) IN GENERAL.—Of the amount appro-
3 priated pursuant to subsection (e) to carry out
4 this part for a fiscal year, the Secretary shall
5 allot not more than one percent among the ter-
6 ritories in accordance with this paragraph.

7 “(B) BASIS FOR ALLOTMENT.—The Sec-
8 retary shall allot to each territory an amount
9 that bears the same proportion to the amount
10 appropriated pursuant to subsection (e) for a
11 fiscal year as the number of individuals aged 3
12 to 21, inclusive, residing in such territory bears
13 to the aggregate number of such individuals re-
14 siding in all such territories.

15 “(C) PROHIBITION ON CONSOLIDATION OF
16 GRANTS.—Section 501 of Public Law 95–134
17 (48 U.S.C. 1469a; relating to the consolidation
18 of one or more grants provided to certain terri-
19 tories) shall not apply with respect to amounts
20 provided to a territory under a grant under this
21 part.

22 “(2) SECRETARY OF THE INTERIOR.—Of the
23 amount appropriated pursuant to subsection (e) to
24 carry out this part for a fiscal year, the Secretary
25 shall provide to the Secretary of the Interior an

1 amount equal to 1.226 percent to carry out sub-
2 section (d) (relating to special education and related
3 services for Indian children with disabilities).

4 “(3) STATES.—

5 “(A) IN GENERAL.—After determining the
6 amount to be allotted to the territories under
7 paragraph (1) and the amount to be provided
8 to the Secretary of the Interior under para-
9 graph (2) for a fiscal year, the Secretary shall
10 allot the remaining amount to the remaining
11 States in accordance with this paragraph.

12 “(B) BASIS FOR ALLOTMENT.—Except as
13 provided in subparagraph (D), the Secretary
14 shall allot to each State an amount equal to the
15 sum of the following amounts:

16 “(i) The amount equal to—

17 “(I) 85 percent of the remaining
18 amount described in subparagraph
19 (A); multiplied by

20 “(II) the child population per-
21 centage of the State (as determined
22 under subparagraph (C)(i)).

23 “(ii) The amount equal to—

1 “(I) 15 percent of the remaining
 2 amount described in subparagraph
 3 (A); multiplied by

4 “(II) the child poverty percentage
 5 of the State (as determined under
 6 subparagraph (C)(ii)).

7 “(C) DETERMINATION OF CHILD POPU-
 8 LATION PERCENTAGE AND CHILD POVERTY
 9 PERCENTAGE.—

10 “(i) CHILD POPULATION PERCENT-
 11 AGE.—The child population percentage
 12 shall be determined by comparing—

13 “(I) the number of children aged
 14 3 to 21, inclusive, in the State who
 15 are of the same age as children with
 16 disabilities for whom the State en-
 17 sures the availability of a free appro-
 18 priate public education; to

19 “(II) the number of such children
 20 in the remaining States.

21 “(ii) CHILD POVERTY PERCENTAGE.—
 22 The child poverty percentage shall be de-
 23 termined by comparing—

24 “(I) the number of children aged
 25 3 to 21, inclusive, in the State living

1 in poverty who are of the same age as
2 children with disabilities for whom the
3 State ensures the availability of a free
4 appropriate public education; to

5 “(II) the number of such children
6 in the remaining States.

7 “(D) TRANSITION FORMULA.—For each of
8 the fiscal years 1997 through 2005, the Sec-
9 retary shall allot the remaining amount to the
10 remaining States in accordance with the follow-
11 ing:

12 “(i) FISCAL YEAR 1997.—For fiscal
13 year 1997, the Secretary shall allot to each
14 remaining State the sum of—

15 “(I) 10 percent multiplied by the
16 amount determined for such State
17 under subparagraph (B); and

18 “(II) 90 percent multiplied by
19 the amount determined for such State
20 under subparagraph (E).

21 “(ii) FISCAL YEAR 1998.—For fiscal
22 year 1998, the Secretary shall allot to each
23 remaining State the sum of—

1 “(I) 20 percent multiplied by the
2 amount determined for such State
3 under subparagraph (B); and

4 “(II) 80 percent multiplied by
5 the amount determined for such State
6 under subparagraph (E).

7 “(iii) FISCAL YEAR 1999.—For fiscal
8 year 1999, the Secretary shall allot to each
9 remaining State the sum of—

10 “(I) 30 percent multiplied by the
11 amount determined for such State
12 under subparagraph (B); and

13 “(II) 70 percent multiplied by
14 the amount determined for such State
15 under subparagraph (E).

16 “(iv) FISCAL YEAR 2000.—For fiscal
17 year 2000, the Secretary shall allot to each
18 remaining State the sum of—

19 “(I) 40 percent multiplied by the
20 amount determined for such State
21 under subparagraph (B); and

22 “(II) 60 percent multiplied by
23 the amount determined for such State
24 under subparagraph (E).

1 “(v) FISCAL YEAR 2001.—For fiscal
2 year 2001, the Secretary shall allot to each
3 remaining State the sum of—

4 “(I) 50 percent multiplied by the
5 amount determined for such State
6 under subparagraph (B); and

7 “(II) 50 percent multiplied by
8 the amount determined for such State
9 under subparagraph (E).

10 “(vi) FISCAL YEAR 2002.—For fiscal
11 year 2002, the Secretary shall allot to each
12 remaining State the sum of—

13 “(I) 60 percent multiplied by the
14 amount determined for such State
15 under subparagraph (B); and

16 “(II) 40 percent multiplied by
17 the amount determined for such State
18 under subparagraph (E).

19 “(vii) FISCAL YEAR 2003.—For fiscal
20 year 2003, the Secretary shall allot to each
21 remaining State the sum of—

22 “(I) 70 percent multiplied by the
23 amount determined for such State
24 under subparagraph (B); and

1 “(II) 30 percent multiplied by
2 the amount determined for such State
3 under subparagraph (E).

4 “(viii) FISCAL YEAR 2004.—For fiscal
5 year 2004, the Secretary shall allot to each
6 remaining State the sum of—

7 “(I) 80 percent multiplied by the
8 amount determined for such State
9 under subparagraph (B); and

10 “(II) 20 percent multiplied by
11 the amount determined for such State
12 under subparagraph (E).

13 “(ix) FISCAL YEAR 2005.—For fiscal
14 year 2005, the Secretary shall allot to each
15 remaining State the sum of—

16 “(I) 90 percent multiplied by the
17 amount determined for such State
18 under subparagraph (B); and

19 “(II) 10 percent multiplied by
20 the amount determined for such State
21 under subparagraph (E).

22 “(E) BASE AMOUNT FOR 1996.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), the amount determined under this
25 subparagraph for a State is the amount

1 that bears the same proportion to the re-
2 maining amount (described in subpara-
3 graph (A)) for the fiscal year under sub-
4 paragraph (D) as the amount received by
5 the State under this section for fiscal year
6 1996 bears to the aggregate of the
7 amounts received by the remaining States
8 (described in subparagraph (A)) under this
9 section for fiscal year 1996.

10 “(ii) REDUCTION IN AMOUNT.—If the
11 State received an amount under this sec-
12 tion for fiscal year 1996 on the basis of
13 children aged 3 to 5, inclusive, in such
14 State, but the State does not make a free
15 appropriate public education available to
16 all children with disabilities aged 3 to 5,
17 inclusive, in the State at the time a deter-
18 mination is made under subparagraph (C),
19 the Secretary shall reduce, on a propor-
20 tional basis, the amount under clause (i)
21 for purposes of allotting amounts under
22 such subparagraph.

23 “(F) INCREASE IN ALLOTMENT AMOUNT
24 DURING TRANSITION YEARS.—

1 “(i) IN GENERAL.— For each of the
2 fiscal years 1997 through 2005, if the
3 amount determined for a State under sub-
4 paragraph (D) is an amount that is less
5 than the amount received by the State
6 under this section for fiscal year 1996
7 and—

8 “(I) the amount of the difference
9 between such two amounts is less
10 than an amount equal to 10 percent
11 of the amount received by the State
12 for fiscal year 1996, then the amount
13 allotted to the State for the fiscal year
14 shall be equal to the amount received
15 by the State for fiscal year 1996; or

16 “(II) the amount of the dif-
17 ference between such two amounts is
18 equal to or greater than an amount
19 equal to 10 percent of the amount re-
20 ceived by the State for fiscal year
21 1996, then the amount allotted to the
22 State for the fiscal year shall be equal
23 to the sum of (aa) the amount deter-
24 mined for the State under subpara-
25 graph (D), and (bb) the amount equal

1 to 10 percent of the amount received
2 by the State for fiscal year 1996.

3 “(ii) ADJUSTMENT.—If amounts are
4 allotted to one or more States under clause
5 (i) for a fiscal year, the Secretary shall re-
6 duce, on a proportional basis, the amounts
7 allotted to the remaining States for which
8 the amount determined under subpara-
9 graph (D) is an amount that is greater
10 than the amount received by such States
11 under this section for fiscal year 1996.

12 “(G) MINIMUM ALLOTMENT.—For each
13 fiscal year for which one of the conditions of
14 subparagraph (F) is met (or such subparagraph
15 does not apply) and subject to the availability
16 of appropriations, for fiscal year 1997 and each
17 subsequent fiscal year, the amount allotted to
18 each remaining State (described in subpara-
19 graph (A)) shall not be less than an amount
20 equal to one-third of one percent of the remain-
21 ing amount (described in subparagraph (A)) for
22 the fiscal year.

23 “(H) MAXIMUM ALLOTMENT.—

24 “(i) IN GENERAL.—For fiscal year
25 1997 and each subsequent fiscal year, the

1 amount allotted to each remaining State
2 (described in subparagraph (A)) under this
3 paragraph shall not be more than an
4 amount equal to

5 “(I) the sum of—

6 “(aa) the number of children
7 with disabilities in the State,
8 aged 6 through 21, who are re-
9 ceiving special education and re-
10 lated services, as determined
11 under clause (ii); and

12 “(bb) if the State is eligible
13 for a grant under section 619,
14 the number of such children in
15 the State, aged 3 through 5; mul-
16 tiplied by

17 “(II) 40 percent of the average
18 per-pupil expenditure in public ele-
19 mentary and secondary schools in the
20 United States.

21 “(ii) DETERMINATION OF NUMBER OF
22 CHILDREN.—The number of children with
23 disabilities receiving special education and
24 related services in any fiscal year shall be
25 equal to the number of such children re-

1 ceiving special education and related serv-
2 ices on December 1 of the fiscal year pre-
3 ceding the fiscal year for which the deter-
4 mination is made.

5 “(iii) AVERAGE PER PUPIL EXPENDI-
6 TURE.—For purposes of clause (i)(II), the
7 term ‘average per pupil expenditure’, in
8 the United States, means the aggregate
9 current expenditures, during the second
10 fiscal year preceding the fiscal year for
11 which the computation is made (or, if sat-
12 isfactory data for such year are not avail-
13 able at the time of computation, then dur-
14 ing the most recent preceding fiscal year
15 for which satisfactory data are available)
16 of all local educational agencies in the
17 United States (which, for purposes of this
18 subparagraph, means the fifty States and
19 the District of Columbia), as the case may
20 be, plus any direct expenditures by the
21 State for operation of such agencies (with-
22 out regard to the source of funds from
23 which either of such expenditures are
24 made), divided by the aggregate number of
25 children in average daily attendance to

1 whom such agencies provided free public
2 education during such preceding year.

3 “(4) SPECIAL RULE WITH RESPECT TO PUERTO
4 RICO.—

5 “(A) IN GENERAL.—Except as provided
6 subparagraph (B) and notwithstanding para-
7 graph (3), the amount allotted to Puerto Rico
8 for a fiscal year shall bear the same or lower
9 proportion to the remaining amount (described
10 in paragraph (3)(A)) as the amount received by
11 Puerto Rico under this section for fiscal year
12 1996 bears to the aggregate of the amounts re-
13 ceived by the remaining States (as described in
14 paragraph (3)(A)) under this section for fiscal
15 year 1996.

16 “(B) INCREASE IN ALLOTMENT AMOUNT
17 DURING CERTAIN FISCAL YEARS.—For each fis-
18 cal year for which the minimum allotment re-
19 quirement under paragraph (3)(G) is met, the
20 amount allotted to Puerto Rico for that fiscal
21 year shall be equal to—

22 “(i) subject to clause (ii), the sum
23 of—

1 “(I) the amount determined for
2 Puerto Rico under subparagraph (A);
3 and

4 “(II) the amount equal to 10 per-
5 cent of such amount determined for
6 Puerto Rico under subparagraph (A);
7 or

8 “(ii) if the amount determined for
9 Puerto Rico under clause (i) is greater
10 than the amount determined for Puerto
11 Rico under paragraph (3), the amount de-
12 termined for Puerto Rico under paragraph
13 (3).

14 “(C) ADJUSTMENT IN AMOUNTS TO RE-
15 MAINING STATES.—If the amount allotted to
16 Puerto Rico for a fiscal year is determined
17 under subparagraph (A) or (B)(i), the Sec-
18 retary shall reallocate to the remaining States (as
19 described in paragraph (3)(A)), on a propor-
20 tional basis, any amount not otherwise allotted
21 to Puerto Rico.

22 “(5) USE OF MOST RECENT POPULATION
23 DATA.—For the purpose of providing grants under
24 this part, the Secretary shall use the most recent
25 population data and data on children aged 3 to 21,

1 inclusive, living in poverty that are available and sat-
2 isfactory to the Secretary.

3 “(c) USE OF FUNDS BY STATE.—

4 “(1) RESERVATION FOR STATE ACTIVITIES.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (D), a State may reserve not more than
7 25 percent of the amount allotted to the State
8 under paragraph (1) or (3) of subsection (b) for
9 a fiscal year for administration and other State-
10 level activities in accordance with subpara-
11 graphs (B) and (C).

12 “(B) STATE ADMINISTRATION.—

13 “(i) IN GENERAL.—For the purpose
14 of administering programs under this part,
15 including the coordination of activities
16 under this part with, and providing tech-
17 nical assistance to, other programs that
18 provide services to children with disabil-
19 ities—

20 “(I) each territory may use up to
21 3 percent of the amount allotted to
22 the territory for a fiscal year, or
23 \$35,000, whichever is greater; and

24 “(II) each remaining State may
25 use up to 3 percent of the amount al-

1 lotted to the State for a fiscal year, or
2 \$450,000, whichever is greater.

3 “(ii) USE OF AMOUNTS FOR ADMINIS-
4 TRATION OF PART C.—If the State edu-
5 cational agency is the lead agency for the
6 State under part C, amounts described in
7 clause (i) may also be used for the admin-
8 istration of part C.

9 “(C) OTHER STATE-LEVEL ACTIVITIES.—A
10 State shall use any amounts reserved under
11 subparagraph (A) for a fiscal year that are not
12 used for administration under subparagraph
13 (B) for such fiscal year—

14 “(i) for support and direct services,
15 including technical assistance and person-
16 nel development and training;

17 “(ii) for administrative costs of mon-
18 itoring and complaint investigation, but
19 only to the extent that such costs exceed
20 the costs incurred for those activities dur-
21 ing fiscal year 1985;

22 “(iii) to establish and implement the
23 mediation process required by section
24 615(d), including providing for the costs of
25 mediators and support personnel;

1 “(iv) to assist local educational agen-
2 cies in meeting personnel shortages;

3 “(v) to develop a State improvement
4 plan under part D;

5 “(vi) for activities at the State and
6 local levels to meet the performance goals
7 established by the State under section
8 612(a)(14) and to support implementation
9 of the State improvement plan under part
10 D if the State receives funds under that
11 part; or

12 “(vii) to supplement other amounts
13 used to develop and implement a Statewide
14 coordinated services system designed to im-
15 prove results for children and families, in-
16 cluding children with disabilities and their
17 families, but not to exceed one percent of
18 the amount received by the State under
19 this section (such system shall be coordi-
20 nated with and, to the extent appropriate,
21 build on the system of coordinated services
22 developed by the State under part C).

23 “(D) REPORT ON USE OF AMOUNTS.—The
24 State shall, as part of the information required

1 to be submitted under section 612, submit a de-
2 scription of—

3 “(i) how amounts reserved under sub-
4 paragraph (A) will be used to meet the re-
5 quirements of this part;

6 “(ii) how such amounts will be allo-
7 cated among the activities described in
8 subparagraphs (B) and (C) to meet State
9 priorities based on input from local edu-
10 cational agencies; and

11 “(iii) what percentage of such
12 amounts, if any, will be distributed to local
13 educational agencies by formula.

14 “(2) SUBGRANTS TO LOCAL EDUCATIONAL
15 AGENCIES AND CERTAIN STATE AGENCIES.—

16 “(A) IN GENERAL.—The State shall pro-
17 vide at least 75 percent of the amount received
18 under a grant for a fiscal year to local edu-
19 cational agencies in the State that have estab-
20 lished their eligibility under section 613, and to
21 State agencies that received funds under section
22 614A(a) (as such section was in effect on the
23 day before the date of the enactment of the
24 IDEA Improvement Act of 1996) for fiscal year
25 1996 and have established their eligibility under

1 section 613, for use in accordance with this
2 part.

3 “(B) METHODS OF DISTRIBUTION.—A
4 State may provide amounts under subpara-
5 graph (A) to local educational agencies and
6 State agencies described under such subpara-
7 graph on the basis of—

8 “(i) school-age population;

9 “(ii) school enrollment;

10 “(iii) numbers of children with disabil-
11 ities receiving a free appropriate public
12 education;

13 “(iv) allocations for previous fiscal
14 years;

15 “(v) any two or more of the factors
16 described in clauses (i) through (iv); or

17 “(vi) poverty, in combination with one
18 or more of the factors described in clauses
19 (i) through (iv).

20 “(C) FORMER CHAPTER 1 STATE AGEN-
21 CIES.—

22 “(i) IN GENERAL.—To the extent nec-
23 essary for each of the fiscal years 1997,
24 1998, and 1999, the State shall use
25 amounts that are available under para-

graph (1)(A) to ensure that each State agency that received amounts in fiscal year 1994 under subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such subpart was in effect on the day before the date of the enactment of the Improving America's Schools Act of 1994) receives, from the combination of funds under paragraph (1)(A) and funds provided under subparagraph (A), an amount equal to—

“(I) the number of children with disabilities, aged 6 to 21, inclusive, to whom the agency was providing special education and related services on December 1 of the fiscal year for which the funds were appropriated, subject to the methods of distribution under subparagraph (B); multiplied by

“(II) the per-child amount provided under such subpart for fiscal year 1994.

“(ii) ADDITIONAL USE OF AMOUNTS.—The State may use amounts

1 described in clause (i) to ensure that each
2 local educational agency that received fis-
3 cal year 1994 funds under that subpart for
4 children who had transferred from a State-
5 operated or State-supported school or pro-
6 gram assisted under that subpart receives,
7 from the combination of funds available
8 under paragraph (1)(A) and funds pro-
9 vided under subparagraph (A), an amount
10 for each such child, aged 3 to 21, inclusive,
11 to whom the agency was providing special
12 education and related services on Decem-
13 ber 1 of the fiscal year for which the funds
14 were appropriated, equal to the per-child
15 amount the agency received under that
16 subpart for fiscal year 1994.

17 “(iii) DETERMINATION OF NUMBER
18 OF CHILDREN.—The number of children
19 counted under clause (i)(I) shall not exceed
20 the number of children aged 3 to 21, inclu-
21 sive, for whom the agency received
22 amounts in fiscal year 1994 under subpart
23 2 of part D of chapter 1 of title I of the
24 Elementary and Secondary Education Act
25 of 1965 (as such subpart was in effect on

1 the day before the date of the enactment
2 of the Improving America's Schools Act of
3 1994).

4 “(D) REALLOCATION OF AMOUNTS.—If a
5 State educational agency determines that a
6 local educational agency is adequately providing
7 a free appropriate public education to all chil-
8 dren with disabilities residing in the area served
9 by that agency with State and local funds, the
10 State educational agency may reallocate any
11 portion of amounts received under a grant
12 under this part that are not needed by that
13 local agency to other local educational agencies
14 in the State that are not adequately providing
15 special education and related services to all chil-
16 dren with disabilities residing in the areas they
17 serve.

18 “(d) USE OF AMOUNTS BY SECRETARY OF THE IN-
19 TERIOR.—

20 “(1) PROVISION OF AMOUNTS FOR ASSIST-
21 ANCE.—

22 “(A) IN GENERAL.—The Secretary of Edu-
23 cation shall provide amounts to the Secretary of
24 the Interior to meet the need for assistance for
25 the education of children with disabilities on

1 reservations aged 5 to 21, inclusive, enrolled in
2 elementary and secondary schools for Indian
3 children operated or funded by the Secretary of
4 the Interior. The amount of such payment for
5 any fiscal year shall be equal to 80 percent of
6 the amount allotted under subsection (b)(2) for
7 that fiscal year.

8 “(B) CALCULATION OF NUMBER OF CHIL-
9 DREN.—In the case of Indian students ages 3
10 to 5, inclusive, who are enrolled in programs af-
11 filiated with Bureau of Indian Affairs (here-
12 after in this subsection referred to as ‘BIA’)
13 schools and that are required by the States in
14 which such schools are located to attain or
15 maintain State accreditation, and which schools
16 have such accreditation prior to the date of en-
17 actment of the Individuals with Disabilities
18 Education Act Amendments of 1991, the school
19 shall be allowed to count those children for the
20 purpose of distribution of the funds provided
21 under this paragraph to the Secretary of the
22 Interior. The Secretary of the Interior shall be
23 responsible for meeting all of the requirements
24 of this part for these children, in accordance
25 with paragraph (2).

1 “(C) ADDITIONAL REQUIREMENT.—With
2 respect to all other children aged 3 to 21, inclu-
3 sive, on reservations, the State educational
4 agency shall be responsible for ensuring that all
5 of the requirements of this part are imple-
6 mented.

7 “(2) SUBMISSION OF INFORMATION.—The Sec-
8 retary of Education may provide the Secretary of
9 the Interior amounts under paragraph (1) for a fis-
10 cal year only if the Secretary of the Interior submits
11 to the Secretary of Education information that—

12 “(A) demonstrates that the Department of
13 the Interior meets the appropriate require-
14 ments, as determined by the Secretary of Edu-
15 cation, of sections 612 (including monitoring
16 and evaluation activities) and 613;

17 “(B) includes a description of how the Sec-
18 retary of the Interior will coordinate the provi-
19 sion of services under this part with local edu-
20 cational agencies, tribes and tribal organiza-
21 tions, and other private and Federal service
22 providers;

23 “(C) includes an assurance that there are
24 public hearings, adequate notice of such hear-
25 ings, and an opportunity for comment afforded

1 to members of tribes, tribal governing bodies,
2 and affected local school boards before the
3 adoption of the policies, programs, and proce-
4 dures described in subparagraph (A);

5 “(D) includes an assurance that the Sec-
6 retary of the Interior will provide such informa-
7 tion as the Secretary of Education may require
8 to comply with section 618;

9 “(E) includes an assurance that the Sec-
10 retary of the Interior and the Secretary of
11 Health and Human Services have entered into
12 a memorandum of agreement, to be provided to
13 the Secretary of Education, for the coordination
14 of services, resources, and personnel between
15 their respective Federal, State, and local offices
16 and with State and local educational agencies
17 and other entities to facilitate the provision of
18 services to Indian children with disabilities re-
19 siding on or near reservations (such agreement
20 shall provide for the apportionment of respon-
21 sibilities and costs including, but not limited to,
22 child find, evaluation, diagnosis, remediation or
23 therapeutic measures, and (where appropriate)
24 equipment and medical or personal supplies as

1 needed for a child to remain in school or a pro-
2 gram); and

3 “(F) includes an assurance that the De-
4 partment of the Interior will cooperate with the
5 Department of Education in its exercise of
6 monitoring and oversight of this application,
7 and any agreements entered into between the
8 Secretary of the Interior and other entities
9 under this part, and will fulfill its duties under
10 this part.

11 Section 616(a) shall apply to the information de-
12 scribed in this paragraph.

13 “(3) PAYMENTS FOR EDUCATION AND SERVICES
14 FOR INDIAN CHILDREN WITH DISABILITIES AGED 3
15 TO 5.—

16 “(A) IN GENERAL.—With funds appro-
17 priated under subsection (e), the Secretary of
18 Education shall make payments to the Sec-
19 retary of the Interior to be distributed to tribes
20 or tribal organizations (as defined under section
21 4 of the Indian Self-Determination and Edu-
22 cation Assistance Act) or consortia of the above
23 to provide for the coordination of assistance for
24 special education and related services for chil-
25 dren with disabilities aged 3 to 5, inclusive, on

1 reservations served by elementary and second-
2 ary schools for Indian children operated or
3 funded by the Department of the Interior. The
4 amount of such payments under subparagraph
5 (B) for any fiscal year shall be equal to 20 per-
6 cent of the amount allotted under subsection
7 (b)(2).

8 “(B) DISTRIBUTION OF FUNDS.—The Sec-
9 retary of the Interior shall distribute the total
10 amount of the payment under subparagraph
11 (A) by allocating to each tribe or tribal organi-
12 zation an amount based on the number of chil-
13 dren with disabilities, ages 3 to 5, inclusive, re-
14 siding on reservations as reported annually di-
15 vided by the total of such children served by all
16 tribes or tribal organizations.

17 “(C) SUBMISSION OF INFORMATION.—To
18 receive a payment under this paragraph, the
19 tribe or tribal organization shall submit such
20 figures to the Secretary of the Interior as re-
21 quired to determine the amounts to be allocated
22 under subparagraph (B). This information shall
23 be compiled and submitted to the Secretary of
24 Education.

1 “(D) USE OF FUNDS.—The funds received
2 by a tribe or tribal organization shall be used
3 to assist in child find, screening, and other pro-
4 cedures for the early identification of children
5 aged 3 to 5, inclusive, parent training, and the
6 provision of direct services. These activities may
7 be carried out directly or through contracts or
8 cooperative agreements with the BIA, local edu-
9 cational agencies, and other public or private
10 nonprofit organizations. The tribe or tribal or-
11 ganization is encouraged to involve Indian par-
12 ents in the development and implementation of
13 these activities. The above entities shall, as ap-
14 propriate, make referrals to local, State, or
15 Federal entities for the provision of services or
16 further diagnosis.

17 “(E) BIENNIAL REPORT.—To be eligible to
18 receive a grant pursuant to subparagraph (A),
19 the tribe or tribal organization shall provide to
20 the Secretary of the Interior a biennial report
21 of activities undertaken under this paragraph,
22 including the number of contracts and coopera-
23 tive agreements entered into, the number of
24 children contacted and receiving services for
25 each year and the estimated number of children

1 needing services during the 2 years following
2 the one in which the report is made. The Sec-
3 retary of the Interior shall include a summary
4 of this information on a biennial basis in the re-
5 port to the Secretary of Education required
6 under this subsection. The Secretary of Edu-
7 cation may require any additional information
8 from the Secretary of the Interior.

9 “(F) PROHIBITIONS.—None of the funds
10 allocated under this paragraph may be used by
11 the Secretary of the Interior for administrative
12 purposes, including child count and the provi-
13 sion of technical assistance.

14 “(4) PLAN FOR COORDINATION OF SERVICES.—

15 The Secretary of the Interior shall develop and im-
16 plement a plan for the coordination of services for
17 all Indian children with disabilities residing on res-
18 ervations covered under this Act. Such plan shall
19 provide for the coordination of services benefiting
20 these children from whatever source, including
21 tribes, the Indian Health Service, other BIA divi-
22 sions, and other Federal agencies. In developing
23 such a plan, the Secretary of the Interior shall con-
24 sult with all interested and involved parties. It shall
25 be based upon the needs of the children and the sys-

1 tem best suited for meeting those needs, and may in-
2 volve the establishment of cooperative agreements
3 between the BIA, other Federal agencies, and other
4 entities. Such plan shall also be distributed upon re-
5 quest to States, State and local educational agencies,
6 and other agencies providing services to infants, tod-
7 dlers, children, and youth with disabilities, to tribes,
8 and to other interested parties.

9 “(5) ESTABLISHMENT OF ADVISORY BOARD.—

10 To meet the requirements of section 612(a)(18), the
11 Secretary of the Interior shall establish, not later
12 than 6 months after the date of the enactment of
13 the IDEA Improvement Act of 1996, under the Bu-
14 reau of Indian Affairs (BIA), an advisory board
15 composed of individuals involved in or concerned
16 with the education and provision of services to In-
17 dian infants, toddlers, children, and youth with dis-
18 abilities, including Indians with disabilities, Indian
19 parents or guardians of such children, teachers,
20 service providers, State and local educational offi-
21 cials, representatives of tribes or tribal organiza-
22 tions, representatives from State Interagency Co-
23 ordinating Councils in States having reservations,
24 and other members representing the various divi-
25 sions and entities of the BIA. The chairperson shall

1 be selected by the Secretary of the Interior. The ad-
2 visory board shall—

3 “(A) assist in the coordination of services
4 within BIA and with other local, State, and
5 Federal agencies in the provision of education
6 for infants, toddlers, children, and youth with
7 disabilities;

8 “(B) advise and assist the Secretary of the
9 Interior in the performance of the Secretary’s
10 responsibilities described in this subsection;

11 “(C) develop and recommend policies con-
12 cerning effective inter- and intra-agency collabo-
13 ration, including modifications to regulations,
14 and the elimination of barriers to inter- and
15 intra-agency programs and activities;

16 “(D) provide assistance and disseminate
17 information on best practices, effective program
18 coordination strategies, and recommendations
19 for improved educational programming for In-
20 dian infants, toddlers, children, and youth with
21 disabilities; and

22 “(E) provide assistance in the preparation
23 of information required under paragraph
24 (2)(D).

25 “(6) ANNUAL REPORTS.—

1 “(A) IN GENERAL.—The advisory board
 2 established under paragraph (5) shall prepare
 3 and submit to the Secretary of the Interior and
 4 to the Congress an annual report containing a
 5 description of the activities of the advisory
 6 board for the preceding year.

7 “(B) AVAILABILITY.—The Secretary of the
 8 Interior shall make available to the Secretary of
 9 Education the report described in subparagraph
 10 (A).

11 “(e) AUTHORIZATION OF APPROPRIATIONS.—For the
 12 purpose of carrying out this part (except for section 619;
 13 relating to preschool grants), there are authorized to be
 14 appropriated to the Secretary such sums as may be nec-
 15 essary.

16 **“SEC. 612. STATE REQUIREMENTS.**

17 “(a) IN GENERAL.—A State shall be eligible to re-
 18 ceive a grant under this part for a fiscal year if, except
 19 as provided in subsection (c), the State submits to the Sec-
 20 retary information that demonstrates to the satisfaction
 21 of the Secretary that the State has in effect policies and
 22 procedures to ensure that it meets each of the following
 23 requirements:

24 “(1) FREE APPROPRIATE PUBLIC EDU-
 25 CATION.—

1 “(A) IN GENERAL.—A free appropriate
2 public education is available to all children with
3 disabilities residing in the State between the
4 ages of 3 and 21, inclusive.

5 “(B) LIMITATION.—Subparagraph (A)
6 shall not apply with respect to children with
7 disabilities aged 3 to 5 and children with dis-
8 abilities aged 18 to 21 to the extent that such
9 application to those children would be inconsis-
10 tent with State law or practice, or the order of
11 any court, relating to the provision of public
12 education to children in such age ranges.

13 “(2) CHILD FIND.—All children with disabilities
14 residing in the State, including children with disabil-
15 ities attending private schools, regardless of the se-
16 verity of such disabilities, and who are in need of
17 special education and related services, are identified,
18 located, and evaluated and that a practical method
19 is developed and implemented to determine which
20 children with disabilities are currently receiving
21 needed special education and related services.

22 “(3) INDIVIDUALIZED EDUCATION PROGRAM.—
23 An individualized education program, or an individ-
24 ualized family service plan that meets the require-
25 ments of section 636(d), is developed, reviewed, and

1 revised for each child with a disability in accordance
2 with section 614(d).

3 “(4) LEAST RESTRICTIVE ENVIRONMENT.—

4 “(A) IN GENERAL.—To the maximum ex-
5 tent appropriate—

6 “(i) children with disabilities, includ-
7 ing children in public or private institu-
8 tions or other care facilities, are educated
9 with children who are not disabled; and

10 “(ii) special classes, separate school-
11 ing, or other removal of children with dis-
12 abilities from the regular educational envi-
13 ronment occurs only when the nature or
14 severity of the disability of a child means
15 that education in regular classes with the
16 use of supplementary aids and services
17 cannot be achieved satisfactorily.

18 “(B) ADDITIONAL REQUIREMENT.—

19 “(i) IN GENERAL.—The State’s meth-
20 od of distributing funds shall not result in
21 placements that violate the requirements of
22 subparagraph (A).

23 “(ii) EXCEPTION.—If the State does
24 not have policies and procedures to ensure
25 compliance with clause (i), the State shall

1 provide the Secretary an assurance that it
2 will revise the funding mechanism as soon
3 as feasible to ensure that such mechanism
4 does not result in such placements.

5 “(5) PROCEDURAL SAFEGUARDS.—

6 “(A) IN GENERAL.—Children with disabil-
7 ities and their parents are afforded the proce-
8 dural safeguards required by section 615.

9 “(B) ADDITIONAL PROCEDURAL SAFE-
10 GUARDS.—Procedures to assure that testing
11 and evaluation materials and procedures uti-
12 lized for the purposes of evaluation and place-
13 ment of children with disabilities will be se-
14 lected and administered so as not to be racially
15 or culturally discriminatory. Such materials or
16 procedures shall be provided and administered
17 in the child’s native language or mode of com-
18 munication, unless it clearly is not feasible to
19 do so, and no single procedure shall be the sole
20 criterion for determining an appropriate edu-
21 cational program for a child.

22 “(6) EVALUATION.—Children with disabilities
23 are evaluated in accordance with subsections (a)
24 through (c) of section 614.

1 “(7) CONFIDENTIALITY.—Agencies in the State
2 comply with section 617(c) (relating to the confiden-
3 tiality of records and information).

4 “(8) TRANSITION FROM PART C TO PRESCHOOL
5 PROGRAMS.—Children participating in early-inter-
6 vention programs assisted under part C, and who
7 will participate in preschool programs assisted under
8 this part, experience a smooth transition to those
9 preschool programs in a manner consistent with sec-
10 tion 637(a)(7). By the third birthday of such a
11 child, an individualized education program or, if con-
12 sistent with sections 614(d)(1)(B) and 636(d), an
13 individualized family service plan, has been devel-
14 oped and is being implemented for the child. The
15 local educational agency will participate in transition
16 planning conferences by the designated lead agency
17 under section 637(a)(7).

18 “(9) CHILDREN IN PRIVATE SCHOOLS.—

19 “(A) IN GENERAL.—To the extent consist-
20 ent with the number and location of children
21 with disabilities in the State who are enrolled in
22 private elementary and secondary schools, pro-
23 vision is made for the participation of such chil-
24 dren in the program assisted or carried out
25 under this part by providing for such children

1 special education and related services, except if
2 the Secretary has arranged for services to such
3 children under subsection (f).

4 “(B) CHILDREN PLACED IN, OR REFERRED
5 TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

6 “(i) IN GENERAL.—Children with dis-
7 abilities in private schools and facilities are
8 provided special education and related
9 services, in accordance with an individual-
10 ized education program, at no cost to their
11 parents, if they are placed in, or referred
12 to, such schools or facilities by the State or
13 a local educational agency in order to com-
14 ply with this part or with any other provi-
15 sion of law requiring the provision of spe-
16 cial education and related services to all
17 children with disabilities in the State.

18 “(ii) ADDITIONAL REQUIREMENTS.—
19 In all cases described in clause (i)—

20 “(I) children with disabilities are
21 placed in, or referred to, only those
22 private schools and facilities that the
23 State educational agency determines
24 meet standards that apply to State
25 and local educational agencies; and

1 “(II) children served in such pri-
2 vate schools or facilities retain access
3 to a free appropriate public education
4 in accordance with this part.

5 “(C) PAYMENT FOR EDUCATION OF CHIL-
6 DREN PLACED IN PRIVATE SCHOOLS WITHOUT
7 CONSENT OF OR REFERRAL BY THE PUBLIC
8 AGENCY.—

9 “(i) IN GENERAL.—If the parents of a
10 child with a disability that had previously
11 received special education and related serv-
12 ices under the authority of a public agency
13 have enrolled their child in a private ele-
14 mentary or secondary school without the
15 consent of or referral by the public agency,
16 as a result of mediation described in sec-
17 tion 615(d), or as a result of a decision
18 rendered under the procedural safeguards
19 of section 615, the public agency may be
20 required to reimburse the parents for the
21 cost of the enrollment, except that the cost
22 of the reimbursement may be reduced or
23 denied—

24 “(I) if, at least 10 school days
25 prior to the removal of the child from

1 the public school, the parents did not
2 give a written statement of their con-
3 cerns to the public agency and notice
4 that they intend to place their child in
5 a private school at public expense;

6 “(II) if, prior to the removal of
7 the child from the public school, the
8 parents did not make the child avail-
9 able for an initial assessment and
10 evaluation by the local educational
11 agency prior to enrollment in the pri-
12 vate school; or

13 “(III) at the discretion of the
14 judge.

15 “(ii) EXCEPTION.—Notwithstanding
16 the notice requirement in clause (i)(I), the
17 cost of the reimbursement may not be re-
18 duced or denied for failure to provide such
19 notice if—

20 “(I) the parent is illiterate or
21 cannot write in English;

22 “(II) compliance with clause
23 (i)(I) would likely result in physical or
24 serious emotional harm to the child;

1 “(III) the school prevented the
2 parent from providing such notice; or

3 “(IV) the parent had not received
4 notice, pursuant to section 615(d), of
5 the notice requirement in clause (i)(I).

6 “(10) STATE EDUCATIONAL AGENCY RESPON-
7 SIBLE FOR GENERAL SUPERVISION.—

8 “(A) IN GENERAL.—The State educational
9 agency is responsible for ensuring that—

10 “(i) the requirements of this part are
11 met; and

12 “(ii) all educational programs for chil-
13 dren with disabilities in the State, includ-
14 ing all such programs administered by any
15 other State or local agency—

16 “(I) are under the general super-
17 vision of individuals in the State who
18 are responsible for educational pro-
19 grams for children with disabilities;
20 and

21 “(II) meet the educational stand-
22 ards of the State educational agency.

23 “(B) LIMITATION.—Subparagraph (A)
24 shall not limit the responsibility of agencies in
25 the State other than the State educational

1 agency to provide, or pay for some or all of the
2 costs of, a free appropriate public education for
3 any child with a disability in the State.

4 “(11) OBLIGATIONS RELATED TO AND METH-
5 ODS OF ENSURING SERVICES.—

6 “(A) ESTABLISHING RESPONSIBILITY FOR
7 SERVICES.—The Chief Executive Officer or des-
8 ignee of the officer shall ensure that an inter-
9 agency agreement or other mechanism for inter-
10 agency coordination is in effect between each
11 public agency described in subparagraph (B)
12 and the appropriate educational agency within
13 the State, in order to ensure that all services
14 described in subparagraph (B)(i) that are need-
15 ed to ensure a free appropriate public education
16 are provided, including the provision of such
17 services during the pendency of any dispute
18 under clause (iii). Such agreement or mecha-
19 nism shall include the following:

20 “(i) AGENCY FINANCIAL RESPON-
21 SIBILITY.—An identification of, or a meth-
22 od for defining, the financial responsibility
23 of each agency for providing services de-
24 scribed in subparagraph (B)(i) to ensure a
25 free appropriate public education to chil-

1 dren with disabilities provided that the fi-
2 nancial responsibility of each public agency
3 described in subparagraph (B), including
4 the State Medicaid agency and other public
5 insurers of children with disabilities, shall
6 precede the financial responsibility of the
7 local education agency (or the State agency
8 responsible for developing the child’s IEP).

9 “(ii) CONDITIONS AND TERMS OF RE-
10 IMBURSEMENT.—The conditions, terms,
11 and procedures under which a local edu-
12 cational agency shall be reimbursed by
13 other agencies.

14 “(iii) INTERAGENCY DISPUTES.—Pro-
15 cedures for resolving interagency disputes
16 (including procedures under which local
17 education agencies may initiate proceed-
18 ings) under the agreement or other mecha-
19 nism to secure reimbursement from other
20 agencies or otherwise implement the provi-
21 sions of the agreement or mechanism.

22 “(iv) COORDINATION OF SERVICES
23 PROCEDURES.—Policies and procedures for
24 agencies to determine and identify the
25 interagency coordination responsibilities of

1 each agency to promote the coordination
2 and timely and appropriate delivery of
3 services described in subparagraph (B)(i).

4 “(B) OBLIGATION OF PUBLIC AGENCY.—

5 “(i) IN GENERAL.—If any public
6 agency other than an educational agency is
7 otherwise obligated under Federal or State
8 law, or assigned responsibility under State
9 policy or pursuant to subparagraph (A), to
10 provide or pay for any services that are
11 also considered special education or related
12 services (such as, but not limited to, serv-
13 ices described in sections 602(1) relating
14 to assistive technology devices, 602(2) re-
15 lating to assistive technology services,
16 602(20) relating to related services,
17 602(27) related to supplementary aids and
18 services, and 602(29) relating to transition
19 services) that are necessary for ensuring a
20 free appropriate public education to chil-
21 dren with disabilities within the State,
22 such public agency shall fulfill that obliga-
23 tion or responsibility, either directly or
24 through contract or other arrangement.

1 “(ii) REIMBURSEMENT FOR SERVICES
2 BY PUBLIC AGENCY.—If a public agency
3 other than an educational agency fails to
4 provide or pay for the special education
5 and related services described in clause (i),
6 the local educational agency (or State
7 agency responsibility for developing the
8 child’s IEP) shall provide or pay for such
9 services to the child. Such local education
10 agency or State agency may then claim re-
11 imbursement for the services from the pub-
12 lic agency that failed to provide or pay for
13 such services and such public agency shall
14 reimburse the local education agency or
15 State agency pursuant to the terms of the
16 interagency agreement described in sub-
17 paragraph (A)(i) according to the proce-
18 dures established in such agreement pursu-
19 ant to subparagraph (A)(ii).

20 “(C) SPECIAL RULE.—The requirements of
21 subparagraph (A) may be met through—

22 “(i) State statute or regulation;

23 “(ii) signed agreements between re-
24 spective agency officials that clearly iden-

1 tify the responsibilities of each agency re-
2 lating to the provision of services; or

3 “(iii) other appropriate methods as
4 determined by the Chief Executive Officer
5 or designee of the officer.

6 “(12) PROCEDURAL REQUIREMENTS RELATING
7 TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—
8 The State educational agency will not make a final
9 determination that a local educational agency is not
10 eligible for assistance under this part without first
11 affording that agency reasonable notice and an op-
12 portunity for a hearing.

13 “(13) COMPREHENSIVE SYSTEM OF PERSONNEL
14 DEVELOPMENT.—The State has established and im-
15 plemented, consistent with the purposes of this title
16 and section 635(a)(7), a comprehensive system of
17 personnel development that is designed to ensure an
18 adequate supply of qualified special education and
19 related services personnel necessary to carry out this
20 part, including—

21 “(A) a statewide, coordinated personnel-de-
22 velopment plan that meets the personnel devel-
23 opment requirements of a State improvement
24 plan under section 683; or

1 “(B) a personnel-development plan, devel-
2 oped in consultation with parents of children
3 with disabilities, State and local educational
4 agencies, institutions of higher education, and
5 professional associations that—

6 “(i) addresses current and projected
7 needs for special education and related
8 services personnel throughout the State;

9 “(ii) addresses the need for the pre-
10 service and in-service preparation of per-
11 sonnel throughout the State, including reg-
12 ular education personnel, to provide edu-
13 cational services to children with disabil-
14 ities;

15 “(iii) includes a system or procedures
16 for recruiting, preparing, and retaining
17 qualified personnel, including personnel
18 with disabilities and personnel from groups
19 that are underrepresented in the field of
20 special education and related services; and

21 “(iv) is integrated, to the maximum
22 extent possible, with other professional de-
23 velopment plans and activities.

24 “(14) PERSONNEL STANDARDS.—

1 “(A) IN GENERAL.—The State educational
2 agency has established and maintains standards
3 to ensure that personnel necessary to carry out
4 this part are appropriately and adequately pre-
5 pared and trained.

6 “(B) STANDARDS DESCRIBED.—Such
7 standards shall—

8 “(i) be consistent with any State-ap-
9 proved or State-recognized certification, li-
10 censing, registration, or other comparable
11 requirements that apply to the professional
12 discipline in which those personnel are pro-
13 viding special education or related services;

14 “(ii) to the extent the standards de-
15 scribed in subparagraph (A) are not based
16 on the highest requirements in the State
17 applicable to a specific profession or dis-
18 cipline, the State is taking steps to require
19 retraining or hiring of personnel that meet
20 appropriate professional requirements in
21 the State; and

22 “(iii) allow paraprofessionals and as-
23 sistants who are appropriately trained and
24 supervised, in accordance with State law,
25 regulations, or written policy, in meeting

1 the requirements of this part to be used to
2 assist in the provision of special education
3 and related services to children with dis-
4 abilities under this part.

5 “(C) EXCEPTION.—If the State determines
6 that, within a geographic area of the State
7 there is a shortage of an appropriate number
8 and type of personnel to provide the special
9 education and related services to children with
10 disabilities within such area, and the appro-
11 priate public agency has taken steps to recruit
12 and hire such personnel, the State may, subject
13 to public comment and review, temporarily sus-
14 pend the standards of subparagraph (B)(ii)—

15 “(i) consistent with State law, for the
16 purpose of recruiting and hiring for such
17 shortage areas the most qualified available
18 individuals who are making progress in ap-
19 plicable coursework; and

20 “(ii) for a period not to exceed 3
21 years.

22 “(15) PERFORMANCE GOALS AND INDICA-
23 TORS.—The State—

1 “(A) has established goals for the perform-
2 ance of children with disabilities in the State
3 that—

4 “(i) will promote the purposes of this
5 title, as stated in section 601(d); and

6 “(ii) are consistent, to the maximum
7 extent appropriate, with other goals and
8 standards established by the State;

9 “(B) has established performance indica-
10 tors the State will use to assess progress toward
11 achieving those goals that, at a minimum, ad-
12 dress the performance of children with disabil-
13 ities on assessments, drop-out rates, and grad-
14 uation rates;

15 “(C) will, every two years, report to the
16 Secretary and the public on the progress of the
17 State, and of children with disabilities in the
18 State, toward meeting the goals established
19 under subparagraph (A); and

20 “(D) based on its assessment of that
21 progress, will revise its State improvement plan
22 under part D as may be needed to improve its
23 performance, if the State receives assistance
24 under such part.

25 “(16) PARTICIPATION IN ASSESSMENTS.—

1 “(A) IN GENERAL.—Children with disabil-
2 ities are included in general State and district-
3 wide assessment programs, with appropriate ac-
4 commodations, where necessary. As appro-
5 priate, the State or local educational agency—

6 “(i) develops guidelines for the par-
7 ticipation of children with disabilities in al-
8 ternate assessments for those children who
9 cannot participate in State and district-
10 wide assessment programs; and

11 “(ii) develops and, beginning not later
12 than July 1, 1999, conducts those alter-
13 nate assessments.

14 “(B) REPORTS.—The State educational
15 agency makes available to the public, and re-
16 ports to the public with the same frequency and
17 in the same detail as it reports on the assess-
18 ment of nondisabled children, the following:

19 “(i) The number of children with dis-
20 abilities participating in regular assess-
21 ments.

22 “(ii) The number of those children
23 participating in alternate assessments.

24 “(iii) The performance of those chil-
25 dren on regular assessments (beginning

1 not later than July 1, 1997) and on alter-
2 nate assessments (not later than July 1,
3 1999), if doing so would be statistically
4 sound and would not result in the disclo-
5 sure of performance results identifiable to
6 individual children.

7 “(17) SUPPLEMENTATION OF STATE, LOCAL,
8 AND OTHER FEDERAL FUNDS.—

9 “(A) IN GENERAL.—The State ensures
10 that amounts provided under a grant to the
11 State under this part, except as provided in
12 subparagraph (B), will be used to supplement
13 State, local, and other Federal funds (including
14 funds not under the direct control of State or
15 local educational agencies) expended for special
16 education and related services, and not to sup-
17 plant those funds.

18 “(B) WAIVER.—The Secretary may waive,
19 in whole or in part, the requirements of sub-
20 paragraph (A) if the Secretary determines that
21 the State has provided clear evidence that all
22 children with disabilities in the State have avail-
23 able a free appropriate public education or that,
24 such a waiver would allow the State to improve
25 the delivery of special education and related

1 services to children with disabilities in the
2 State.

3 “(18) PUBLIC PARTICIPATION.—Prior to the
4 adoption of any policies and procedures needed to
5 comply with this section (including any amendments
6 to such policies and procedures), the State ensures
7 that there are public hearings, adequate notice of
8 the hearings, and an opportunity for comment avail-
9 able to the general public, including individuals with
10 disabilities and parents of children with disabilities.

11 “(19) STATE ADVISORY PANEL.—

12 “(A) IN GENERAL.—The State has estab-
13 lished and maintains an advisory panel for the
14 purpose of providing policy guidance with re-
15 spect to special education and related services
16 for children with disabilities in the State.

17 “(B) MEMBERSHIP.—Such advisory panel
18 shall consist of members appointed by the Gov-
19 ernor, or any other official authorized under
20 State law to make such appointments, that is
21 representative of the State population and that
22 is composed of individuals involved in, or con-
23 cerned with, the education of children with dis-
24 abilities, including—

1 “(i) parents of children with disabil-
2 ities;

3 “(ii) individuals with disabilities;

4 “(iii) teachers;

5 “(iv) representatives of institutions of
6 higher education that prepare special edu-
7 cation and related services personnel;

8 “(v) State and local education offi-
9 cials;

10 “(vi) administrators of programs for
11 children with disabilities;

12 “(vii) representatives of other State
13 agencies involved in the financing or deliv-
14 ery of related services to children with dis-
15 abilities;

16 “(viii) at least one representative of a
17 vocational, community, or business organi-
18 zation concerned with the provision of
19 transition services to children with disabil-
20 ities; and

21 “(ix) representatives from the State
22 juvenile and adult corrections agencies.

23 “(C) SPECIAL RULE.—A majority of the
24 members of the panel shall be individuals with

1 disabilities or parents of children with disabil-
2 ities.

3 “(D) DUTIES.—The advisory panel shall—

4 “(i) advise the State educational agen-
5 cy of unmet needs within the State in the
6 education of children with disabilities;

7 “(ii) comment publicly on any rules or
8 regulations proposed by the State regard-
9 ing—

10 “(I) the education of children
11 with disabilities; and

12 “(II) the procedures for distribu-
13 tion of amounts received by the State
14 under a grant under this part;

15 “(iii) advise the State educational
16 agency in developing evaluations and re-
17 porting on data to the Secretary under sec-
18 tion 618;

19 “(iv) advise the State educational
20 agency in developing corrective action
21 plans to address findings identified in Fed-
22 eral monitoring reports under this part;
23 and

24 “(v) advise the State educational
25 agency in developing and implementing

1 policies relating to the coordination of serv-
2 ices for children with disabilities.

3 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF
4 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT
5 SERVICES.—If the State educational agency provides free
6 appropriate public education to children with disabilities,
7 or provides direct services to such children, such agency—

8 “(1) shall comply with any additional require-
9 ments of section 613(a), as if such agency were a
10 local educational agency; and

11 “(2) may use amounts that are otherwise avail-
12 able to such agency under this part to serve those
13 children without regard to section 613(a)(2)(A)(i)
14 (relating to excess costs).

15 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

16 “(1) IN GENERAL.—If a State has on file with
17 the Secretary policies and procedures that dem-
18 onstrate that such State meets any requirement of
19 subsection (a), including any policies and procedures
20 filed under this part as in effect before the date of
21 the enactment of the IDEA Improvement Act of
22 1996, the Secretary shall consider such State to
23 have met such requirement for purposes of receiving
24 a grant under this part.

1 “(2) MODIFICATIONS MADE BY STATE.—Sub-
 2 ject to paragraph (3), an application submitted by a
 3 State in accordance with this section shall remain in
 4 effect until the State submits to the Secretary such
 5 modifications as the State deems necessary. This
 6 section shall apply to a modification to an applica-
 7 tion to the same extent and in the same manner as
 8 this section applies to the original plan.

9 “(3) MODIFICATIONS REQUIRED BY THE SEC-
 10 RETARY.—The Secretary may require a State to
 11 amend its application at any time as a result of the
 12 Secretary’s compliance reviews under parts B and C.
 13 The Secretary shall reduce or shall not provide any
 14 further payments to the State educational agency
 15 until the Secretary is satisfied that the State edu-
 16 cational agency is complying with that requirement.

17 “(d) APPROVAL BY THE SECRETARY.—

18 “(1) IN GENERAL.—If the Secretary determines
 19 that a State is eligible to receive a grant under this
 20 part, the Secretary shall notify the State of that de-
 21 termination.

22 “(2) NOTICE AND HEARING.—The Secretary
 23 shall not make a final determination that a State is
 24 not eligible to receive a grant under this part until
 25 after providing the State—

1 “(A) with reasonable notice; and

2 “(B) with an opportunity for a hearing.

3 “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-
4 GRAMS.—Nothing in this title permits a State to reduce
5 medical and other assistance available, or to alter eligi-
6 bility, under titles V and XIX of the Social Security Act
7 with respect to the provision of a free appropriate public
8 education for children with disabilities within the State.

9 “(f) BY-PASS FOR CHILDREN IN PRIVATE
10 SCHOOLS.—

11 “(1) IN GENERAL.—If, on the date of enact-
12 ment of the Education of the Handicapped Act
13 Amendments of 1983, a State educational agency is
14 prohibited by law from providing for the participa-
15 tion in special programs of children with disabilities
16 enrolled in private elementary and secondary schools
17 as required by subsection (a)(9), the Secretary shall,
18 notwithstanding such provision of law, arrange for
19 the provision of services to such children through ar-
20 rangements which shall be subject to the require-
21 ments of such subsection.

22 “(2) PAYMENTS.—

23 “(A) DETERMINATION OF AMOUNTS.—If
24 the Secretary arranges for services pursuant to
25 this subsection, the Secretary, after consulta-

tion with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

“(i) the total amount received by the State under this part for such fiscal year; by

“(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

“(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

“(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be

1 any failure or inability on the part of the State
2 educational agency to meet the requirements of
3 subsection (a)(9).

4 “(3) NOTICE AND HEARING.—

5 “(A) IN GENERAL.—The Secretary shall
6 not take any final action under this subsection
7 until the State educational agency affected by
8 such action has had an opportunity, for at least
9 45 days after receiving written notice thereof,
10 to submit written objections and to appear be-
11 fore the Secretary or the Secretary’s designee
12 to show cause why such action should not be
13 taken.

14 “(B) REVIEW OF ACTION.—If a State edu-
15 cational agency is dissatisfied with the Sec-
16 retary’s final action after a proceeding under
17 subparagraph (A), such agency may, not later
18 than 60 days after notice of such action, file
19 with the United States court of appeals for the
20 circuit in which such State is located a petition
21 for review of that action. A copy of the petition
22 shall be forthwith transmitted by the clerk of
23 the court to the Secretary. The Secretary there-
24 upon shall file in the court the record of the
25 proceedings on which the Secretary based the

1 Secretary's action, as provided in section 2112
2 of title 28, United States Code.

3 “(C) REVIEW OF FINDINGS OF FACT.—The
4 findings of fact by the Secretary, if supported
5 by substantial evidence, shall be conclusive, but
6 the court, for good cause shown, may remand
7 the case to the Secretary to take further evi-
8 dence, and the Secretary may thereupon make
9 new or modified findings of fact and may mod-
10 ify the Secretary's previous action, and shall file
11 in the court the record of the further proceed-
12 ings. Such new or modified findings of fact
13 shall likewise be conclusive if supported by sub-
14 stantial evidence.

15 “(D) JURISDICTION OF COURT OF AP-
16 PEALS; REVIEW BY UNITED STATES SUPREME
17 COURT.—Upon the filing of a petition under
18 subparagraph (B), the United States court of
19 appeals shall have jurisdiction to affirm the ac-
20 tion of the Secretary or to set it aside, in whole
21 or in part. The judgment of the court shall be
22 subject to review by the Supreme Court of the
23 United States upon certiorari or certification as
24 provided in section 1254 of title 28, United
25 States Code.

1 **“SEC. 613. LOCAL EDUCATIONAL AGENCY REQUIREMENTS.**

2 “(a) IN GENERAL.—A local educational agency shall
3 be eligible for assistance under this part for any fiscal year
4 if, except as provided in subsection (b), such agency sub-
5 mits to the State educational agency information that
6 demonstrates to the satisfaction of the State educational
7 agency the following:

8 “(1) CONSISTENCY WITH STATE POLICIES.—

9 The local educational agency, in providing for the
10 education of children with disabilities within its ju-
11 risdiction, has in effect policies, procedures, and pro-
12 grams that are consistent with the State policies and
13 procedures established under section 612.

14 “(2) USE OF AMOUNTS.—

15 “(A) IN GENERAL.—Amounts provided to
16 the local educational agency under this part—

17 “(i) shall be used only to pay the ex-
18 cess costs of providing special education
19 and related services to children with dis-
20 abilities;

21 “(ii) shall be used to supplement
22 State, local, and other Federal funds and
23 not to supplant such funds;

24 “(iii) except as provided in subpara-
25 graph (B), may not be used to reduce the
26 level of expenditures for the education of

1 children with disabilities made by the local
2 educational agency from State or local
3 funds below the level of those expenditures
4 for the preceding fiscal year;

5 “(iv) may be used, notwithstanding
6 clause (i) or any other provision of this
7 part, for the costs of special education and
8 related services provided in a regular class
9 or other education related setting to a
10 child with a disability in accordance with
11 the child’s individualized education pro-
12 gram, even if one or more nondisabled chil-
13 dren benefit from those services; and

14 “(v) may be used, in accordance with
15 subsection (f) and notwithstanding clause
16 (i) or any other provision of this part, to
17 develop and implement a coordinated serv-
18 ices system.

19 “(B) EXCEPTION.—Notwithstanding the
20 restriction in subparagraph (A)(iii), a local edu-
21 cation agency may reduce the level of expendi-
22 tures where such reduction is attributable to—

23 “(i) the departure, by retirement or
24 otherwise, of special education personnel;

1 “(ii) a decrease in the enrollment of
2 children with disabilities;

3 “(iii) the termination of the obligation
4 of the agency, consistent with this part, to
5 provide a program of special education to
6 a particular child with a disability that is
7 an exceptionally costly program, as deter-
8 mined by the State educational agency, be-
9 cause the child—

10 “(I) has left the jurisdiction of
11 the agency;

12 “(II) has reached the age at
13 which the obligation of the agency to
14 provide a free appropriate public edu-
15 cation to the child has terminated; or

16 “(III) no longer needs such pro-
17 gram of special education; or

18 “(iv) the termination of costly expend-
19 itures for long-term purchases, such as the
20 acquisition of equipment or the construc-
21 tion of school facilities.

22 “(3) INFORMATION FOR STATE EDUCATIONAL
23 AGENCY.—The local educational agency shall provide
24 the State educational agency with information nec-
25 essary to enable the State educational agency to

1 carry out its duties under this part, including, with
2 respect to paragraphs (14) and (15) of section
3 612(a), information relating to the performance of
4 children with disabilities participating in programs
5 carried out under this part.

6 “(4) PUBLIC INFORMATION.—The local edu-
7 cational agency shall make available to parents of
8 children with disabilities and to the general public
9 all documents relating to the eligibility of such agen-
10 cy under this part.

11 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

12 “(1) IN GENERAL.—If a local educational agen-
13 cy or State agency has on file with the State edu-
14 cational agency policies and procedures that dem-
15 onstrate that such local educational agency, or such
16 State agency, as the case may be, meets any require-
17 ment of subsection (a), including any policies and
18 procedures filed under this part as in effect before
19 the date of the enactment of IDEA Improvement
20 Act of 1996, the State educational agency shall con-
21 sider such local educational agency or State agency,
22 as the case may be, to have met such requirement
23 for purposes of receiving assistance under this part.

24 “(2) MODIFICATION MADE BY LOCAL EDU-
25 CATIONAL AGENCY.—Subject to paragraph (3), an

1 application submitted by a local educational agency
2 in accordance with this section shall remain in effect
3 until the such agency submits to the State edu-
4 cational agency such modifications as the local edu-
5 cational agency deems necessary.

6 “(3) MODIFICATIONS REQUIRED BY STATE
7 EDUCATIONAL AGENCY.—The State educational
8 agency may require a local educational agency to
9 amend its application at anytime as a result of the
10 compliance reviews of the State educational agency
11 under parts B and C. This paragraph shall apply to
12 a modification to an application to the same extent
13 and in the same manner as this section applies to
14 the original plan.

15 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-
16 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the
17 State educational agency determines that a local edu-
18 cational agency or State agency is not eligible under this
19 section, the State educational agency shall notify such
20 local educational agency or State agency, as the case may
21 be, of that determination and shall provide such local edu-
22 cational agency or State agency with reasonable notice and
23 an opportunity for a hearing.

24 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

1 “(1) IN GENERAL.—If the State educational
2 agency, after reasonable notice and an opportunity
3 for a hearing, finds that a local educational agency
4 or State agency that has been determined to be eligi-
5 ble under this section is failing to comply with any
6 requirement described in subsection (a), the State
7 educational agency shall reduce or shall not provide
8 any further payments to the local educational agency
9 or State agency until the State educational agency
10 is satisfied that the local educational agency or State
11 agency, as the case may be, is complying with that
12 requirement.

13 “(2) ADDITIONAL REQUIREMENT.—Any State
14 agency or local educational agency in receipt of a no-
15 tice described in paragraph (1) shall, by means of
16 public notice, take such measures as may be nec-
17 essary to bring the pendency of an action pursuant
18 to this subsection to the attention of the public with-
19 in the jurisdiction of such agency.

20 “(3) CONSIDERATION.—In carrying out its re-
21 sponsibilities under paragraph (1), the State edu-
22 cational agency shall consider any decision made in
23 a hearing held under section 615 that is adverse to
24 the local educational agency or State agency involved
25 in that decision.

1 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

2 “(1) IN GENERAL.—A State educational agency
3 may require a local educational agency to establish
4 its eligibility jointly with another local educational
5 agency if the State educational agency determines
6 that the local educational agency would be ineligible
7 under this section because the local educational
8 agency would not be able to establish and maintain
9 programs of sufficient size and scope to effectively
10 meet the needs of children with disabilities.

11 “(2) AMOUNT OF PAYMENTS.—If a State edu-
12 cational agency requires the joint establishment of
13 eligibility under paragraph (1), the total amount of
14 funds made available to the affected local edu-
15 cational agencies shall be equal to the sum of the
16 payments that each such local educational agency
17 would have received under section 611(c) if such
18 agencies were eligible for such payments.

19 “(3) REQUIREMENTS.—Local educational agen-
20 cies that establish joint eligibility under this sub-
21 section shall—

22 “(A) adopt policies and procedures that
23 are consistent with the State’s policies and pro-
24 cedures under section 612(a); and

1 “(B) be jointly responsible for implement-
2 ing programs that receive assistance under this
3 part.

4 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
5 ICE AGENCIES.—

6 “(A) IN GENERAL.—If an educational serv-
7 ice agency is required by State law to carry out
8 programs under this part, the joint responsibil-
9 ities given to local educational agencies under
10 this subsection shall—

11 “(i) not apply to the administration
12 and disbursement of any payments re-
13 ceived by that educational service agency;
14 and

15 “(ii) be carried out only by that edu-
16 cational service agency.

17 “(B) ADDITIONAL REQUIREMENT.—Not-
18 withstanding any other provision of this sub-
19 section, an educational service agency shall pro-
20 vide for the education of children with disabil-
21 ities in the least restrictive environment, as re-
22 quired by section 612(a)(4).

23 “(f) COORDINATED SERVICES SYSTEM.—

24 “(1) IN GENERAL.—A local educational agency
25 may not use more than 5 percent of the amount

1 such agency receives under this part for any fiscal
2 year, in combination with other amounts (which
3 shall include amounts other than education funds),
4 to develop and implement a coordinated services sys-
5 tem designed to improve results for children and
6 families, including children with disabilities and their
7 families.

8 “(2) ACTIVITIES.—In implementing a coordi-
9 nated services system under this subsection, a local
10 educational agency may carry out activities which in-
11 clude—

12 “(A) improving the effectiveness and effi-
13 ciency of service delivery, including developing
14 strategies that promote accountability for re-
15 sults;

16 “(B) service coordination and case man-
17 agement that facilitates the linkage of individ-
18 ualized education programs under this part and
19 individualized family service plans under part C
20 with individualized service plans under multiple
21 Federal and State programs, such as title I of
22 the Rehabilitation Act of 1973 (vocational reha-
23 bilitation), title XIX of the Social Security Act
24 (Medicaid), and title XVI of the Social Security
25 Act (supplemental security income);

1 “(C) developing and implementing inter-
 2 agency financing strategies for the provision of
 3 education, health, mental health, and social
 4 services, including transition services and relat-
 5 ed services under this title; and

6 “(D) interagency personnel development
 7 for individuals working on coordinated services.

8 “(3) COORDINATION WITH CERTAIN PROJECTS
 9 UNDER ELEMENTARY AND SECONDARY EDUCATION
 10 ACT OF 1965.—If a local educational agency is carry-
 11 ing out a coordinated services project under title XI
 12 of the Elementary and Secondary Education Act of
 13 1965 and a coordinated services project under this
 14 part in the same schools, such agency shall use
 15 amounts under this subsection in accordance with
 16 the requirements of that title.

17 “(g) DIRECT SERVICES BY THE STATE EDU-
 18 CATIONAL AGENCY.—

19 “(1) IN GENERAL.—A State educational agency
 20 shall use the payments that would otherwise have
 21 been available to a local educational agency or to a
 22 State agency to provide special education and relat-
 23 ed services directly to children with disabilities resid-
 24 ing in the area served by that local agency, or for
 25 whom that State agency is responsible, if the State

1 educational agency determines that the local edu-
2 cation agency or State agency, as the case may be—

3 “(A) has not provided the information
4 needed to establish the eligibility of such agency
5 under this section;

6 “(B) is unable to establish and maintain
7 programs of free appropriate public education
8 that meet the requirements of subsection (a);

9 “(C) is unable or unwilling to be consoli-
10 dated with one or more local educational agen-
11 cies in order to establish and maintain such
12 programs; or

13 “(D) has one or more children with disabil-
14 ities who can best be served by a regional or
15 State program or service delivery system de-
16 signed to meet the needs of such children.

17 “(2) MANNER AND LOCATION OF EDUCATION
18 AND SERVICES.—The State educational agency may
19 provide special education and related services under
20 paragraph (1) in such manner and at such locations
21 (including regional or State centers) as the State
22 agency considers appropriate. Such education and
23 services shall be provided in accordance with this
24 part.

1 “(h) STATE AGENCY ELIGIBILITY.—Any State agen-
 2 cy that desires to receive a subgrant for any fiscal year
 3 under section 611(c) shall demonstrate to the satisfaction
 4 of the State educational agency that—

5 “(1) all children with disabilities who are par-
 6 ticipating in programs and projects funded under
 7 this part receive a free appropriate public education,
 8 and that those children and their parents are pro-
 9 vided all the rights and procedural safeguards de-
 10 scribed in this part; and

11 “(2) the agency meets such other conditions of
 12 this section as the Secretary determines to be appro-
 13 priate.

14 **“SEC. 614. EVALUATIONS, REEVALUATIONS, INDIVIDUAL-**
 15 **IZED EDUCATION PROGRAMS, AND EDU-**
 16 **CATIONAL PLACEMENTS.**

17 “(a) EVALUATIONS AND REEVALUATIONS.—

18 “(1) INITIAL EVALUATIONS.—

19 “(A) IN GENERAL.—A State educational
 20 agency, other State agency, or local educational
 21 agency shall conduct an initial evaluation, in ac-
 22 cordance with this paragraph and subsection
 23 (b), before the initial provision of special edu-
 24 cation and related services to a child with a dis-
 25 ability under this part.

1 “(B) PROCEDURES.—Such initial evalua-
2 tion shall consist of procedures—

3 “(i) to determine whether a child is a
4 child with a disability (as defined in sec-
5 tion 602(3)); and

6 “(ii) to determine the educational
7 needs of such child.

8 “(C) PARENTAL CONSENT.—

9 “(i) IN GENERAL.—The agency pro-
10 posing to conduct an initial evaluation to
11 determine if the child qualifies as a child
12 with a disability as defined in section
13 602(3)(A) or 602(3)(B) shall obtain an in-
14 formed consent from the parent of such
15 child before the evaluation is conducted.
16 Parental consent for evaluation shall not
17 be construed as consent for placement for
18 receipt of special education and related
19 services.

20 “(ii) REFUSAL.—If the parents of
21 such child refuse consent for the evalua-
22 tion, the agency may continue to pursue an
23 evaluation by utilizing the mediation and
24 due process procedures under section
25 615(e).

1 “(2) REEVALUATIONS.—A local educational
2 agency shall ensure that a reevaluation of each child
3 with a disability is conducted—

4 “(A) if conditions warrant a reevaluation
5 or if the child’s parent or teacher requests a re-
6 evaluation, but at least once every 3 years; and

7 “(B) in accordance with subsections (b)
8 and (c).

9 “(b) EVALUATION PROCEDURES.—

10 “(1) NOTICE.—The local educational agency
11 shall provide notice to the parents of a child with a
12 disability, in accordance with subsections (b)(3),
13 (b)(4), and (c) of section 615, that describes any
14 evaluation procedures such agency proposes to con-
15 duct.

16 “(2) CONDUCT OF EVALUATION.—In conduct-
17 ing the evaluation, the local educational agency
18 shall—

19 “(A) use a variety of assessment tools and
20 strategies to gather relevant functional and de-
21 velopmental information, including information
22 provided by the parent, that may assist in de-
23 termining whether the child is a child with a
24 disability and the content of the child’s individ-
25 ualized education program, including informa-

1 tion related to enabling the child to be involved
2 in and progress in the general curriculum or,
3 for preschool children, to participate in appro-
4 priate activities;

5 “(B) not use any single procedure as the
6 sole criterion for determining whether a child is
7 a child with a disability or determining an ap-
8 propriate educational program for the child;
9 and

10 “(C) use technically sound instruments
11 that may assess the relative contribution of cog-
12 nitive and behavioral factors, in addition to
13 physical or developmental factors.

14 “(3) ADDITIONAL REQUIREMENTS.—Each local
15 educational agency shall ensure that—

16 “(A) tests and other evaluation materials
17 used to assess a child under this section—

18 “(i) are selected and administered so
19 as not to be discriminatory on a racial or
20 cultural basis; and

21 “(ii) are provided and administered in
22 the child’s native language or other mode
23 of communication, unless it is clearly not
24 feasible to do so; and

1 “(B) any standardized tests that are given
2 to the child—

3 “(i) have been validated for the spe-
4 cific purpose for which they are used;

5 “(ii) are administered by qualified
6 personnel; and

7 “(iii) are administered in accordance
8 with any instructions provided by the pro-
9 ducer of such tests; and

10 “(C) the child is assessed in all areas of
11 suspected disability.

12 “(4) DETERMINATION OF ELIGIBILITY.—Upon
13 completion of administration of tests and other eval-
14 uation materials—

15 “(A) the determination of whether the
16 child is a child with a disability as defined in
17 section 602(3) or section 602(3)(B) will be
18 made by a team of qualified professionals and
19 the parent of the child in accordance with para-
20 graph (5); and

21 “(B) a copy of the evaluation report and
22 the documentation of determination of eligibility
23 will be given to the parent.

24 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
25 MINATION.—In making a determination of eligibility

1 under paragraph (4)(A), a child shall not be deter-
2 mined to be a child with a disability based on any
3 of the following:

4 “(A) Lack of instruction, including instruc-
5 tion in reading or math.

6 “(B) Limited English proficiency.

7 “(C) Cultural or environmental factors.

8 “(D) Economic disadvantage.

9 “(c) REEVALUATION PROCEDURES.—

10 “(1) IN GENERAL.—As part of any reevaluation
11 to assess a child under this section, the individual-
12 ized education program team and other qualified
13 professionals, as appropriate, shall—

14 “(A) review existing evaluation data on the
15 child, including current classroom-based assess-
16 ments and teacher and related services provid-
17 ers observation; and

18 “(B) on the basis of that review and input
19 from the child’s parents, identify what addi-
20 tional data, if any, are needed to determine—

21 “(i) whether the child continues to
22 have a disability, as described in section
23 602(3)(A)(i) or section 602(3)(B);

24 “(ii) the child’s present levels of per-
25 formance and educational needs; and

1 “(iii)(I) whether the child continues to
2 need special education and related services;
3 and

4 “(II) if so, any additions or modifica-
5 tions to the special education and related
6 services to enable the child to meet the ob-
7 jectives set out in the individualized edu-
8 cation program of the child and to partici-
9 pate, as appropriate, in the general cur-
10 riculum.

11 “(2) TESTS AND OTHER EVALUATION MATE-
12 RIALS.—The local educational agency shall admin-
13 ister such tests and other evaluation materials as
14 may be needed to produce the data identified by the
15 IEP Team under paragraph (1)(B).

16 “(3) REQUIREMENTS IF ADDITIONAL DATA NOT
17 NEEDED.—If the IEP Team and other qualified pro-
18 fessionals, as appropriate, determines that no addi-
19 tional data are needed to determine whether the
20 child continues to be a child with a disability, the
21 local educational agency—

22 “(A) shall notify the child’s parents of—

23 “(i) that determination and the rea-
24 sons for it; and

1 “(ii) the right of such parents to re-
2 quest an assessment to determine whether
3 the child continues to be a child with a dis-
4 ability; and

5 “(B) shall not be required to conduct such
6 an assessment unless requested to by the child’s
7 parents.

8 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

9 “(1) REQUIREMENT THAT PROGRAM BE IN EF-
10 FECT.—

11 “(A) IN GENERAL.—At the beginning of
12 each school year, each local educational agency,
13 or State educational agency, as the case may
14 be, shall have in effect, for each child with a
15 disability in its jurisdiction, an individualized
16 education program, as defined in section
17 602(11).

18 “(B) PROGRAM FOR CHILD AGED 3 TO 5.—

19 In the case of a child with a disability aged 3
20 to 5, inclusive, an individualized family service
21 plan that contains the material described in sec-
22 tion 636, and that is developed in accordance
23 with this section, may serve as the IEP of the
24 child if using that plan as the IEP is—

25 “(i) consistent with State policy; and

1 “(ii) agreed to by the agency and the
2 child’s parents.

3 “(2) DEVELOPMENT OF IEP.—

4 “(A) IN GENERAL.—An individualized edu-
5 cation program team shall develop the IEP de-
6 scribed in paragraph (1). In developing such
7 IEP, the IEP Team, subject to subparagraph
8 (B), shall—

9 “(i) consider the child’s strengths and
10 the parents’ concerns for enhancing their
11 child’s education;

12 “(ii) consider the results of the initial
13 evaluation or most recent reevaluation;

14 “(iii) in the case of a child whose be-
15 havior impedes his or her learning or that
16 of others, consider, when appropriate,
17 strategies, including positive behavior man-
18 agement interventions and strategies to
19 help the child behave in an appropriate
20 and responsible manner conducive to learn-
21 ing;

22 “(iv) in the case of a child with lim-
23 ited English proficiency, consider the lan-
24 guage needs of the child as such needs re-
25 late to the child’s IEP;

1 “(v) in the case of a child who is blind
2 or visually impaired, provide for instruction
3 in braille and the use of braille unless all
4 members of the IEP Team concur that,
5 after an evaluation of the child’s reading
6 and writing skills, needs, and appropriate
7 reading and writing media (including an
8 evaluation of the child’s future needs for
9 instruction in braille or the use of braille),
10 instruction in braille or the use of braille
11 is not appropriate for the child;

12 “(vi) consider the communication
13 needs of the child, and in the case of a
14 child who is deaf, hard-of-hearing, blind, or
15 communicatively disabled, consider the lan-
16 guage and communication needs of the
17 child; and

18 “(vii) consider whether the child re-
19 quires assistive technology services or de-
20 vices.

21 “(B) REQUIREMENT WITH RESPECT TO
22 REGULAR EDUCATION TEACHER.—The regular
23 education teacher of the child, as a member of
24 the IEP Team, shall, to the extent appropriate,
25 participate in the development of the IEP of

1 the child, including the determination of appro-
2 priate positive behavior-management interven-
3 tions and strategies consistent with subpara-
4 graph (A)(iii) of this paragraph, and the deter-
5 mination of supplementary aids and services,
6 program modifications, and support for school
7 personnel consistent with section 602(11)(E).

8 “(3) REVIEW AND REVISION OF IEP.—

9 “(A) IN GENERAL.—The local educational
10 agency shall ensure that, subject to subpara-
11 graph (C), the IEP Team—

12 “(i) reviews each IEP at least once a
13 year to determine whether the annual goals
14 for the child are being achieved; and

15 “(ii) revises the IEP to address—

16 “(I) any lack of expected
17 progress toward the annual goals and
18 in the general curriculum, where ap-
19 propriate;

20 “(II) the results of any reevalua-
21 tion conducted under this section;

22 “(III) information about the
23 child provided to, or by, the parents,
24 as described in section 602(11)(F)(ii);
25 or

1 “(IV) the child’s anticipated
2 needs as otherwise appropriate.

3 “(B) CERTAIN CHILDREN WITH DISABIL-
4 ITIES.—

5 “(i) IN GENERAL.—In the case of a
6 child with a disability who has dem-
7 onstrated a pattern of behavior that sig-
8 nificantly impairs the education of the
9 child, or the education of the classmates of
10 the child, and the ability of the teacher of
11 the child to teach, if such teacher initiates
12 or requests an IEP meeting, then the ap-
13 propriate authority shall convene an IEP
14 meeting to review the child’s educational
15 program, related services, supplementary
16 aids and services, and placement.

17 “(ii) REVIEW OF IEP.—In carrying
18 out a review of the IEP of the child, the
19 IEP Team shall determine—

20 “(I) the appropriateness of the
21 current IEP of the child;

22 “(II) whether or not special edu-
23 cation and related services have been
24 appropriately provided to the child;

1 “(III) whether or not other sup-
2 plementary aids or services, including
3 teacher training, are needed to ad-
4 dress the behavior of the child; and

5 “(IV) subject to clauses (iii) and
6 (iv), whether or not the placement of
7 the child should be changed.

8 “(iii) DETERMINATION OF CHANGE IN
9 PLACEMENT.—Prior to proposing a change
10 in the placement of the child, the IEP
11 Team shall first consider and then docu-
12 ment the following:

13 “(I) The cumulative record over
14 a reasonable period of time describing
15 the frequent behaviors exhibited by
16 the child that significantly impairs the
17 education of the child, the education
18 of the classmates of the child, and the
19 ability of the teacher of the child to
20 teach.

21 “(II) Documentation of the ef-
22 forts made to address the behavior of
23 the child, the use of supplementary
24 services or strategies (including the
25 use of behavior management plans)

1 that have been implemented over a
2 reasonable period of time and have
3 failed to address the behavior of the
4 child in a manner that would enable
5 the child to remain in the current
6 educational placement of the child
7 without significantly impairing the
8 education of the child, the education
9 of the classmates of the child, and the
10 ability of the teacher of the child to
11 teach.

12 “(III) The training made avail-
13 able to the teacher or teachers of the
14 child.

15 “(iv) EXPEDITED DUE PROCESS
16 HEARING.—If the IEP Team determines
17 that a change in placement of the child is
18 appropriate, and the parents of the child
19 disagree with such determination, then ei-
20 ther party may request an expedited due
21 process hearing in accordance with section
22 615(f)(2).

23 “(C) REQUIREMENT WITH RESPECT TO
24 REGULAR EDUCATION TEACHER.—The regular
25 education teacher of the child, as a member of

1 the IEP Team, shall, to the extent appropriate,
2 participate in the review and revision of the
3 IEP of the child.

4 “(4) FAILURE TO MEET TRANSITION OBJEC-
5 TIVES.—If a participating agency, other than the
6 local educational agency, fails to provide the transi-
7 tion services described in the IEP in accordance with
8 section 602(11)(F)(ii), the local educational agency
9 shall reconvene the IEP Team to identify alternative
10 strategies to meet the transition objectives for the
11 child set out in that program.

12 “(5) RULE OF CONSTRUCTION.—Nothing in
13 this subsection shall be construed—

14 “(A) to decrease the amount of informa-
15 tion that a parent receives concerning the
16 progress of the child of such parent; or

17 “(B) to increase the amount of paperwork
18 for the teachers, related services personnel, and
19 administrators of such child.

20 “(e) EDUCATIONAL PLACEMENTS.—Each local edu-
21 cational agency or State educational agency shall ensure
22 that the parents of each child with a disability are mem-
23 bers of any group that makes decisions on the educational
24 placement of their child.

1 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

2 “(a) ESTABLISHMENT OF PROCEDURES.—Any State
3 educational agency or local educational agency that re-
4 ceives assistance under this part shall establish and main-
5 tain procedures in accordance with this section to assure
6 that children with disabilities and their parents are guar-
7 anteed procedural safeguards with respect to the provision
8 of free appropriate public education by such agencies.

9 “(b) TYPES OF PROCEDURES.—The procedures re-
10 quired by this section shall include—

11 “(1) an opportunity for the parents of a child
12 with a disability to examine all records relating to
13 such child and to participate in meetings with re-
14 spect to the identification, evaluation, and edu-
15 cational placement of the child, and the provision of
16 a free appropriate public education to such child,
17 and to obtain an independent educational evaluation
18 of the child;

19 “(2) procedures to protect the rights of the
20 child whenever the parents of the child are not
21 known, the agency cannot, after reasonable efforts,
22 locate the parents, or the child is a ward of the
23 State, including the assignment of an individual
24 (who shall not be an employee of the State edu-
25 cational agency, the local educational agency, or any
26 other agency that is involved in the education or

1 care of the child) to act as a surrogate for the par-
2 ents;

3 “(3) written prior notice to the parents of the
4 child whenever such agency—

5 “(A) proposes to initiate or change; or

6 “(B) refuses to initiate or change;

7 the identification, evaluation, or educational place-
8 ment of the child, in accordance with subsection (c),
9 or the provision of a free appropriate public edu-
10 cation to the child;

11 “(4) procedures designed to assure that the no-
12 tice required by paragraph (3) is in the native lan-
13 guage of the parents, unless it clearly is not feasible
14 to do so;

15 “(5) an opportunity for mediation in accordance
16 with subsection (e);

17 “(6) an opportunity to present complaints with
18 respect to any matter relating to the identification,
19 evaluation, or educational placement of the child, or
20 the provision of a free appropriate public education
21 to such child;

22 “(7) procedures that require the parent of a
23 child with a disability, or the attorney representing
24 the child, to provide notice (which shall remain con-
25 fidential)—

1 “(A) to the State educational agency or
2 local educational agency, as the case may be, in
3 the complaint filed under paragraph (6); and

4 “(B) that shall include—

5 “(i) the name of the child, the address
6 of the residence of the child, and the name
7 of the school at which the child is attend-
8 ing;

9 “(ii) a description of the nature of the
10 problem of the child relating to such pro-
11 posed initiation or change, including facts
12 relating to such problem; and

13 “(iii) the proposed resolution of the
14 problem; and

15 “(8) procedures that require the State edu-
16 cational agency to develop a model form to assist
17 parents in filing a complaint in accordance with
18 paragraph (7).

19 “(c) CONTENT OF PRIOR WRITTEN NOTICE.—The
20 notice required by subsection (b)(3) shall include—

21 “(1) a description of the action proposed or re-
22 fused by the agency;

23 “(2) an explanation of why the agency proposes
24 or refuses to take the action;

1 “(3) a description of any other options that the
2 agency considered and the reasons why those options
3 were rejected;

4 “(4) a description of each evaluation procedure,
5 test, record, or report the agency used as a basis for
6 the proposed or refused action;

7 “(5) a description of any other factors that are
8 relevant to the agency’s proposal or refusal; and

9 “(6) a statement that the parents of a child
10 with a disability have protection under the proce-
11 dural safeguards of this title and, if this notice is
12 not an initial referral for evaluation, the means by
13 which a copy of a description of the procedural safe-
14 guards can be obtained.

15 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

16 “(1) IN GENERAL.—A copy of the procedural
17 safeguards available to the parents of a child with
18 a disability shall be given to the parents, at a mini-
19 mum—

20 “(A) upon initial referral for evaluation;

21 “(B) upon each notification of an individ-
22 ualized education program meeting and upon
23 reevaluation of the child; and

24 “(C) upon registration of a complaint
25 under subsection (b)(6).

1 “(2) CONTENTS.—The procedural safeguards
2 notice shall include a full explanation of the proce-
3 dural safeguards written in the native language of
4 the parents, unless not feasible to do so, and written
5 in an easily understandable manner, available under
6 this section and under regulations promulgated by
7 the Secretary relating to—

8 “(A) independent educational evaluation;

9 “(B) prior written notice;

10 “(C) parental consent;

11 “(D) access to educational records;

12 “(E) opportunity to present complaints;

13 “(F) the child’s placement during pend-
14 ency of due process proceedings;

15 “(G) procedures for students who are sub-
16 ject to placement in an interim alternative edu-
17 cational setting;

18 “(H) requirements for unilateral placement
19 by parents of children in private schools at pub-
20 lic expense;

21 “(I) mediation;

22 “(J) due process hearings, including re-
23 quirements for disclosure of evaluation results
24 and recommendations;

1 “(K) State-level appeals (if applicable in
2 that State);

3 “(L) civil actions; and

4 “(M) attorney’s fees.

5 “(e) MEDIATION.—

6 “(1) IN GENERAL.—Any State educational
7 agency or local educational agency that receives as-
8 sistance under this part shall ensure that procedures
9 are established and implemented to allow parties to
10 disputes involving the provision of free appropriate
11 public education to children with disabilities by any
12 such State educational agency or local educational
13 agency to resolve such disputes through a mediation
14 process.

15 “(2) REQUIREMENTS.—Such procedures shall
16 meet the following requirements:

17 “(A) The procedures shall ensure that the
18 mediation process—

19 “(i) is voluntary on the part of the
20 parents and may be terminated by either
21 party after a good faith effort has been
22 made by the party terminating the medi-
23 ation process; and

1 “(ii) is conducted by a qualified and
2 impartial mediator who is trained in effec-
3 tive mediation techniques.

4 “(B) The State shall maintain a list of in-
5 dividuals who are qualified mediators and
6 knowledgeable in laws and regulations relating
7 to the provision of special education and related
8 services.

9 “(C) The State shall bear the cost of the
10 mediation process.

11 “(D) Each session in the mediation process
12 shall be scheduled in a timely manner and shall
13 be held in a location that is convenient to the
14 parties to the dispute.

15 “(E) An agreement reached by the parties
16 to the dispute in the mediation process shall be
17 set forth in a written mediation agreement.

18 “(F) Discussions that occur during the
19 mediation process shall be confidential and may
20 not be used as evidence in any subsequent due
21 process hearings or civil proceedings, and the
22 parties to the mediation process may be re-
23 quired to sign a confidentiality pledge prior to
24 the commencement of such process.

1 “(G) The State shall determine whether or
2 not attorneys may attend or otherwise partici-
3 pate in the mediation process after offering the
4 opportunity for parents and representatives of
5 school districts to participate in the mediation
6 process prior to any due process filing without
7 attorneys present.

8 “(f) IMPARTIAL DUE PROCESS HEARING.—

9 “(1) IN GENERAL.—Whenever a complaint has
10 been received under section 614(d)(3)(B), or sub-
11 section (b)(6) or (k) of this section, the parents in-
12 volved in such complaint shall have an opportunity
13 for an impartial due process hearing which shall be
14 conducted by the State educational agency or by the
15 local educational agency, as determined by State law
16 or by the State educational agency.

17 “(2) DISCLOSURE OF EVALUATIONS AND REC-
18 COMMENDATIONS.—

19 “(A) IN GENERAL.—At least 10 school
20 days prior to a hearing conducted pursuant to
21 paragraph (1), each party shall disclose to all
22 other parties all evaluations and recommenda-
23 tions based on the offering party’s evaluations
24 which the party intends to use at the hearing.

1 “(B) PROHIBITION.—Any party which fails
2 to meet the requirement of subparagraph (A)
3 shall be barred from introducing such evalua-
4 tions and recommendations at such hearing.

5 “(3) LIMITATION ON CONDUCT OF HEARING.—
6 A hearing conducted pursuant to paragraph (1) may
7 not be conducted by an employee of the State edu-
8 cational agency or the local educational agency in-
9 volved in the education or care of the child.

10 “(4) ADDITIONAL REQUIREMENTS WITH RE-
11 SPECT TO HEARINGS FOR CERTAIN CHILDREN WITH
12 DISABILITIES.—A hearing conducted pursuant to
13 paragraph (1) that is based upon a complaint re-
14 ceived under section 614(d)(3)(B) shall, in addition
15 to the requirements contained in this subsection,
16 comply with the following additional requirements:

17 “(A) In determining whether or not the de-
18 cision by the IEP Team to change the place-
19 ment of the child is justified and appropriate,
20 the hearing officer shall, at a minimum, review
21 the information under clause (iii) of such sec-
22 tion.

23 “(B) The child shall remain in the current
24 educational placement of the child until the

1 hearing officer reaches a final decision under
2 this subsection.

3 “(C) The hearing officer shall make a de-
4 termination of findings and reach a final deci-
5 sion not later than 20 days after the first day
6 of the hearing, or, at the discretion of the hear-
7 ing officer, not later than 30 days after such
8 first day of the hearing.

9 “(D) The placement of the child, including
10 the placement of the child during any due proc-
11 ess or judicial proceeding, shall be determined
12 in accordance with the final decision of the
13 hearing officer under this subsection, unless the
14 parents and the State or local educational agen-
15 cy agree otherwise.

16 “(g) APPEAL.—If the hearing required by subsection
17 (f) is conducted by a local educational agency, any party
18 aggrieved by the findings and decision rendered in such
19 a hearing may appeal such findings and decision to the
20 State educational agency. Such agency shall conduct an
21 impartial review of such decision. The officer conducting
22 such review shall make an independent decision upon com-
23 pletion of such review.

1 “(h) SAFEGUARDS.—Any party to a hearing con-
2 ducted pursuant to subsection (f), or an appeal conducted
3 pursuant to subsection (g), shall be accorded—

4 “(1) the right to be accompanied and advised
5 by counsel and by individuals with special knowledge
6 or training with respect to the problems of children
7 with disabilities;

8 “(2) the right to present evidence and confront,
9 cross-examine, and compel the attendance of wit-
10 nesses;

11 “(3) the right to a written, or, at the option of
12 the parents, electronic verbatim record of such hear-
13 ing; and

14 “(4) the right to written, or, at the option of
15 the parents, electronic findings of fact and decisions
16 (which findings and decisions shall be made available
17 to the public consistent with the requirements of sec-
18 tion 617(c) (relating to the confidentiality of data,
19 information, and records) and shall also be transmit-
20 ted to the advisory panel established pursuant to
21 section 612(a)(18)).

22 “(i) ADMINISTRATIVE PROCEDURES.—

23 “(1) IN GENERAL.—A decision made in a hear-
24 ing conducted pursuant to subsection (f) shall be
25 final, except that any party involved in such hearing

1 may appeal such decision under the provisions of
2 subsection (g) and paragraph (2) of this subsection.

3 “(2) RIGHT TO BRING CIVIL ACTION.—

4 “(A) IN GENERAL.—Any party aggrieved
5 by the findings and decision made under sub-
6 section (f) who does not have the right to an
7 appeal under subsection (g), and any party ag-
8 grieved by the findings and decision under this
9 subsection, shall have the right to bring a civil
10 action with respect to the complaint presented
11 pursuant to this section, which action may be
12 brought in any State court of competent juris-
13 diction or in a district court of the United
14 States without regard to the amount in con-
15 troversy.

16 “(B) ADDITIONAL REQUIREMENTS.—In
17 any action brought under this paragraph the
18 court—

19 “(i) shall receive the records of the
20 administrative proceedings;

21 “(ii) shall hear additional evidence at
22 the request of a party; and

23 “(iii) basing its decision on the pre-
24 ponderance of the evidence, shall grant

1 such relief as the court determines is ap-
2 propriate.

3 “(3) JURISDICTION OF DISTRICT COURTS; AT-
4 TORNEYS’ FEES.—

5 “(A) IN GENERAL.—The district courts of
6 the United States shall have jurisdiction of ac-
7 tions brought under this section without regard
8 to the amount in controversy.

9 “(B) AWARD OF ATTORNEYS’ FEES.—In
10 any action or proceeding brought under this
11 section, the court, in its discretion, may award
12 reasonable attorneys’ fees as part of the costs
13 to the parents of a child or youth with a disabil-
14 ity who is the prevailing party.

15 “(C) DETERMINATION OF AMOUNT OF AT-
16 TORNEYS’ FEES.—Fees awarded under this
17 paragraph shall be based on rates prevailing in
18 the community in which the action or proceed-
19 ing arose for the kind and quality of services
20 furnished. No bonus or multiplier may be used
21 in calculating the fees awarded under this sub-
22 section.

23 “(D) PROHIBITION OF ATTORNEYS’ FEES
24 AND RELATED COSTS FOR CERTAIN SERV-
25 ICES.—(i) Attorneys’ fees may not be awarded

1 and related costs may not be reimbursed in any
2 action or proceeding under this subsection for
3 services performed subsequent to the time of a
4 written offer of settlement to a parent if—

5 “(I) the offer is made within the time
6 prescribed by Rule 68 of the Federal Rules
7 of Civil Procedure or, in the case of an ad-
8 ministrative proceeding, at any time more
9 than ten days before the proceeding begins;

10 “(II) the offer is not accepted within
11 10 days; and

12 “(III) the court or administrative
13 hearing officer finds that the relief finally
14 obtained by the parents is not more favor-
15 able to the parents than the offer of settle-
16 ment.

17 “(ii) Attorneys’ fees may not be awarded
18 relating to any meeting of the IEP Team unless
19 such meeting is convened as a result of a judi-
20 cial action or proceeding.

21 “(E) EXCEPTION TO PROHIBITION ON AT-
22 TORNEYS’ FEES AND RELATED COSTS.—Not-
23 withstanding subparagraph (D), an award of
24 attorneys’ fees and related costs may be made
25 to a parent who is the prevailing party and who

1 was substantially justified in rejecting the set-
2 tlement offer.

3 “(F) REDUCTION IN AMOUNT OF ATTOR-
4 NEYS’ FEES.—Except as provided in subpara-
5 graph (G), whenever the court finds that—

6 “(i) the parent, during the course of
7 the action or proceeding, unreasonably pro-
8 tracted the final resolution of the con-
9 troversy;

10 “(ii) the amount of the attorneys’ fees
11 otherwise authorized to be awarded unrea-
12 sonably exceeds the hourly rate prevailing
13 in the community for similar services by
14 attorneys of reasonably comparable skill
15 and experience;

16 “(iii) the time spent and legal services
17 furnished were excessive considering the
18 nature of the action or proceeding;

19 “(iv) the attorney representing the
20 parent did not provide to the school dis-
21 trict the appropriate information in the
22 due process complaint in accordance with
23 subsection (b)(7); or

1 “(v) the amount of attorneys’ fees re-
2 requested is not consistent with the extent of
3 the success of the parents;
4 the court shall reduce, accordingly, the amount
5 of the attorneys’ fees awarded under this sub-
6 section.

7 “(G) EXCEPTION TO REDUCTION IN
8 AMOUNT OF ATTORNEYS’ FEES.—The provi-
9 sions of subparagraph (F) shall not apply in
10 any action or proceeding if the court finds that
11 the State or local educational agency unreason-
12 ably protracted the final resolution of the action
13 or proceeding or there was a violation of this
14 section.

15 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
16 PLACEMENT.—Except as provided in subsection (k), dur-
17 ing the pendency of any proceedings conducted pursuant
18 to this section, unless the State or local educational agency
19 and the parents otherwise agree, the child shall remain
20 in the then current educational placement of such child,
21 or, if applying for initial admission to a public school,
22 shall, with the consent of the parents, be placed in the
23 public school program until all such proceedings have been
24 completed.

1 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
2 SETTING.—

3 “(1) AUTHORITY OF SCHOOL PERSONNEL.—

4 School personnel under this section may, to the
5 same extent as a court, order a change in the place-
6 ment of a child with a disability—

7 “(A) to an appropriate interim alternative
8 educational setting, another setting, or suspen-
9 sion, for not more than 10 school days (to the
10 extent such alternatives would be applied to
11 children without disabilities); and

12 “(B) to an appropriate interim alternative
13 educational setting for the same amount of time
14 that a child without a disability would be sub-
15 ject to discipline, but for not more than an ad-
16 ditional 45 school days if—

17 “(i) the child carries a weapon to
18 school or to a school function under the ju-
19 risdiction of a State or a local educational
20 agency;

21 “(ii) the child possesses or uses illegal
22 drugs or sells or solicits the sale of medica-
23 tions or illegal drugs while at school or a
24 school function under the jurisdiction of a
25 State or local educational agency; or

1 “(iii) the child causes serious injury
2 while at school or at a school function
3 under the jurisdiction of a State or a local
4 educational agency.

5 “(2) AUTHORITY OF HEARING OFFICER.—A
6 hearing officer under this section may, to the same
7 extent as a court, order a change in the placement
8 of a child with a disability to an appropriate interim
9 alternative educational setting for not more than 45
10 school days if—

11 “(A) the maintenance of the current place-
12 ment of such child is substantially likely to re-
13 sult in injury to the child or to others; and

14 “(B) the hearing officer—

15 “(i) determines that the public agency
16 has demonstrated by substantial evidence
17 that the requirement of subparagraph (A)
18 has been met;

19 “(ii) considers the appropriateness of
20 the child’s current placement; and

21 “(iii) considers whether the public
22 agency has made reasonable efforts to min-
23 imize the risk of harm including the use of
24 supplementary aids and services.

1 “(3) DETERMINATION OF SETTING.—The alter-
2 native educational setting described in paragraph (1)
3 or paragraph (2) shall be determined by the individ-
4 ualized education program team.

5 “(4) MANIFESTATION DETERMINATION RE-
6 VIEW.—

7 “(A) IN GENERAL.—If a change in place-
8 ment or disciplinary proceeding, including ex-
9 pulsion, is contemplated as a result of an action
10 described in paragraph (1) or paragraph (2)—

11 “(i) not later than 3 school days after
12 the date on which such action has been
13 taken the parents shall be notified of such
14 action; and

15 “(ii) not later than 15 school days
16 after the date on which such action has
17 been taken a review shall be conducted of
18 the relationship between the child’s disabil-
19 ity and the behavior described in para-
20 graph (1).

21 “(B) INDIVIDUALS TO CARRY OUT RE-
22 VIEW.—A review described in subparagraph (A)
23 shall be conducted by the IEP Team and other
24 qualified personnel.

25 “(C) CONDUCT OF REVIEW.—

1 “(i) IN GENERAL.—In carrying out a
2 review described in subparagraph (A), the
3 individuals described in subparagraph (B)
4 shall consider appropriate factors, includ-
5 ing—

6 “(I) the appropriateness of the
7 child’s placement;

8 “(II) the consistency of the im-
9 plementation of the child’s entire IEP,
10 including the technical soundness of
11 the behavior strategies used;

12 “(III) evaluation and diagnostic
13 results, which may include any such
14 results supplied by the parents or
15 guardian of the child; and

16 “(IV) observations of the child.

17 “(ii) ADDITIONAL REQUIREMENTS.—
18 The IEP Team may determine that the be-
19 havior of the child was not a manifestation
20 of such child’s disability only if the IEP
21 Team first determines that the disability—

22 “(I) did not impair the ability of
23 the child to understand the impact
24 and consequences of the behavior; and

1 “(II) did not impair the ability of
2 the child to control the behavior.

3 “(5) DETERMINATION THAT BEHAVIOR WAS
4 MANIFESTATION OF DISABILITY.—If the result of
5 the review described in paragraph (4) is a deter-
6 mination that the behavior of the child with a dis-
7 ability was a manifestation of such child’s disability
8 and the parents of such child agree with such deter-
9 mination, the educational placement of such child
10 may be changed. If the parents do not agree with
11 such determination or with such changed educational
12 placement, an immediate appeal may be made to a
13 hearing officer to determine whether the child’s
14 placement should be changed. Any party aggrieved
15 by the determination of the hearing officer may initi-
16 ate a due process hearing as described in subsection
17 (f).

18 “(6) DETERMINATION THAT BEHAVIOR WAS
19 NOT MANIFESTATION OF DISABILITY.—

20 “(A) IN GENERAL.—If the result of the re-
21 view described in paragraph (4) is a determina-
22 tion that the behavior of the child with a dis-
23 ability was not a manifestation of such child’s
24 disability, the relevant disciplinary procedures
25 applicable to children without disabilities may

1 be applied in the same manner in which they
2 would be applied to children without disabilities.
3 If the parents do not agree with such applica-
4 tion, a due process hearing, as described in sub-
5 section (f), may be initiated. Any determination
6 under paragraph (4) that a child's behavior was
7 not a manifestation of a disability shall be re-
8 viewed by a hearing officer under subsection (f),
9 whether or not the child's parents request a
10 hearing, before educational services to the child
11 may be terminated under this paragraph. Dur-
12 ing the pendency of such due process proce-
13 dures, the child shall continue to receive edu-
14 cational services in the alternative educational
15 setting.

16 “(B) SPECIAL RULE.—Where application
17 of the relevant disciplinary procedures in sub-
18 paragraph (A) would result in the expulsion of
19 the child without the receipt of educational
20 services, the child may be expelled only if—

21 “(i) the child carries a weapon to
22 school or to a school function under the ju-
23 risdiction of a State or local educational
24 agency; or

1 “(ii) the child possesses or uses illegal
2 drugs or sells or solicits the sale of medica-
3 tions or illegal drugs while at school or a
4 school function under the jurisdiction of a
5 State or local educational agency.

6 “(7) EXPEDITED HEARING.—The State or local
7 educational agency shall arrange for an expedited
8 hearing in any case described in this subsection
9 when requested by the parent.

10 “(8) ADDITIONAL REQUIREMENTS.—

11 “(A) MAINTENANCE OF ALTERNATIVE
12 EDUCATIONAL SETTING.— If the parent of a
13 child described in this section requests a hear-
14 ing pursuant to subsection (f), the child shall
15 remain in the alternative educational setting in
16 which such child was placed during the pend-
17 ency of any proceedings under this subsection,
18 unless the parents and the State or local edu-
19 cational agency agree otherwise.

20 “(B) PROTECTIONS FOR CHILDREN NOT
21 YET ELIGIBLE FOR SPECIAL EDUCATION AND
22 RELATED SERVICES.—

23 “(i) IN GENERAL.—A child who has
24 not been determined to be eligible for spe-
25 cial education and related services under

1 this part and who has engaged in behavior
2 that violated any rule or code of conduct of
3 the local educational agency, including any
4 behavior described in paragraph (1), may
5 assert any of the protections provided for
6 in this part if the local educational agency
7 had knowledge (as determined in accord-
8 ance with this subparagraph) that the
9 child was a child with a disability before
10 the behavior that precipitated the discipli-
11 nary action occurred.

12 “(ii) BASIS OF KNOWLEDGE.—A local
13 educational agency shall be deemed to have
14 knowledge that a child is a child with a
15 disability if—

16 “(I) the parent of the child has
17 expressed concern in writing (unless
18 the parent is illiterate or has a dis-
19 ability that prevents compliance with
20 the requirements contained in this
21 subclause) to personnel of the appro-
22 priate educational agency that the
23 child is in need of special education
24 and related services;

1 “(II) the behavior of the child
2 demonstrates the need for such serv-
3 ices;

4 “(III) the parent of the child has
5 requested an evaluation of the child
6 pursuant to section 614; or

7 “(IV) the teacher of the child, or
8 other personnel of the local edu-
9 cational agency, has expressed con-
10 cern about the behavior of the child to
11 the director of special education of
12 such agency or to other personnel of
13 the agency.

14 “(iii) CONDITIONS THAT APPLY IF NO
15 BASIS OF KNOWLEDGE.—

16 “(I) IN GENERAL.—If a local
17 educational agency does not have
18 knowledge that a child is a child with
19 a disability (in accordance with clause
20 (ii)) prior to taking disciplinary meas-
21 ures against the child, the child may
22 be subjected to the same disciplinary
23 measures as measures applied to chil-
24 dren without disabilities, who engaged

1 in comparable behaviors consistent
2 with paragraph (2).

3 “(II) LIMITATIONS.—If a request
4 is made for an evaluation of a child
5 during the time period in which the
6 child is subjected to disciplinary meas-
7 ures under paragraph (1), the evalua-
8 tion shall be conducted in an expe-
9 dited manner. If the child is deter-
10 mined to be a child with a disability,
11 taking into consideration information
12 from the evaluation conducted by the
13 agency and information provided by
14 the parents, the agency shall provide
15 special education and related services
16 in accordance with the provisions of
17 this part, except that, pending the re-
18 sults of the evaluation, the child shall
19 remain in the educational placement
20 determined by school authorities.

21 “(C) REFERRAL TO AND ACTION BY LAW
22 ENFORCEMENT AND JUDICIAL AUTHORITIES.—
23 Nothing in this part shall be construed to pro-
24 hibit an agency from reporting a crime commit-
25 ted by a child with a disability to appropriate

1 authorities or to prevent State law enforcement
2 and judicial authorities from exercising their re-
3 sponsibilities with regard to the application of
4 Federal and State law to crimes committed by
5 a child with a disability.

6 “(9) DEFINITIONS.—For purposes of this sub-
7 section, the following definitions apply:

8 “(A) ILLEGAL DRUG.—The term ‘illegal
9 drug’—

10 “(i) means a controlled substance
11 within the meaning of any of paragraphs
12 (1) through (5) of section 202 of the Con-
13 trolled Substances Act (21 U.S.C 812); but

14 “(ii) does not include a controlled sub-
15 stance within the meaning of paragraphs
16 (1) through (5) of section 202 of such Act
17 if—

18 “(I) such controlled substance is
19 legally possessed or used under the
20 supervision of a licensed health care
21 professional; or

22 “(II) such controlled substance is
23 legally possessed or used under any
24 other authority under such Act or

1 under any other provision of Federal
2 law.

3 “(B) SERIOUS INJURY.—The term ‘serious
4 injury’ means an injury that involves substan-
5 tial risk of death, extreme physical pain, obvi-
6 ous or protracted disfigurement, loss of the use
7 of bodily members or organs, broken bones, or
8 significant endangerment to an individual’s
9 emotional health or safety that is the result of
10 a physical or verbal assault.

11 “(C) WEAPON.—The term ‘weapon’ has
12 the meaning given the term ‘dangerous weapon’
13 under paragraph (2) of the first subsection (g)
14 of section 930 of title 18, United States Code.

15 “(I) RULE OF CONSTRUCTION.—Nothing in this part
16 shall be construed to restrict or limit the rights, proce-
17 dures, and remedies available under the Constitution, the
18 Americans with Disabilities Act, title V of the Rehabilita-
19 tion Act of 1973, or other Federal laws protecting the
20 rights of children with disabilities, except that before the
21 filing of a civil action under such laws seeking relief that
22 is also available under this part, the procedures under sub-
23 sections (f) and (g) shall be exhausted to the same extent
24 as would be required had the action been brought under
25 this part.

1 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
2 MAJORITY.—

3 “(1) IN GENERAL.—A State that receives
4 amounts from a grant under this part may provide
5 that, when a child with a disability reaches the age
6 of majority under State law (except for a child with
7 a disability who has been determined to be incom-
8 petent under State law)—

9 “(A) the public agency shall provide any
10 notice required by this section to both the indi-
11 vidual and the parents;

12 “(B) all other rights accorded to parents
13 under this part transfer to the child;

14 “(C) the agency shall notify the individual
15 and the parents of the transfer of rights; and

16 “(D) all rights accorded to parents under
17 this part transfer to children who are incarcer-
18 ated in an adult or juvenile Federal, State, or
19 local correctional institution.

20 “(2) SPECIAL RULE.—If, under State law, a
21 child with a disability who has reached the age of
22 majority under State law is determined not to have
23 the ability to provide informed consent with respect
24 to the educational program of the child, the State
25 shall establish procedures for appointing the parent

1 of the child, or another appropriate individual, to
 2 represent the educational interests of the child
 3 throughout the period of eligibility of the child under
 4 this part.

5 **“SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.**

6 “(a) WITHHOLDING OF PAYMENTS.—

7 “(1) IN GENERAL.—Whenever the Secretary,
 8 after reasonable notice and opportunity for hearing
 9 to the State educational agency involved (and to any
 10 local educational agency or State agency affected by
 11 any failure described in subparagraph (B)), finds—

12 “(A) that there has been a failure by the
 13 State to comply substantially with any provision
 14 of this part; or

15 “(B) that there is a failure to comply with
 16 any condition of a local educational agency’s or
 17 State agency’s eligibility under this part;

18 the Secretary shall, after notifying the State edu-
 19 cational agency, withhold any further payments to
 20 the State under this part.

21 “(2) NATURE OF WITHHOLDING.—If the Sec-
 22 retary withholds further payments under paragraph
 23 (1), the Secretary may determine that such with-
 24 holding will be limited to programs or projects, or
 25 portions thereof, affected by the failure, or that the

1 State educational agency shall not make further pay-
2 ments under this part to specified local educational
3 agencies or State agencies affected by the failure.
4 Until the Secretary is satisfied that there is no
5 longer any failure to comply with the provisions of
6 this part, as specified in subparagraph (A) or (B) of
7 paragraph (1), no further payments shall be made to
8 the State under this part, or payments by the State
9 educational agency under this part shall be limited
10 to local educational agencies and State agencies
11 whose actions did not cause or were not involved in
12 the failure, as the case may be. Any State edu-
13 cational agency, State agency, or local educational
14 agency that has received notice under paragraph (1)
15 shall, by means of a public notice, take such meas-
16 ures as may be necessary to bring the pendency of
17 an action pursuant to this subsection to the atten-
18 tion of the public within the jurisdiction of such
19 agency.

20 “(b) JUDICIAL REVIEW.—

21 “(1) IN GENERAL.—If any State is dissatisfied
22 with the Secretary’s final action with respect to the
23 eligibility of the State under section 612, such State
24 may, not later than 60 days after notice of such ac-
25 tion, file with the United States court of appeals for

1 the circuit in which such State is located a petition
2 for review of that action. A copy of the petition shall
3 be forthwith transmitted by the clerk of the court to
4 the Secretary. The Secretary thereupon shall file in
5 the court the record of the proceedings upon which
6 the Secretary's action was based, as provided in sec-
7 tion 2112 of title 28, United States Code.

8 “(2) JURISDICTION; REVIEW BY UNITED
9 STATES SUPREME COURT.—Upon the filing of such
10 petition, the court shall have jurisdiction to affirm
11 the action of the Secretary or to set it aside, in
12 whole or in part. The judgment of the court shall be
13 subject to review by the Supreme Court of the Unit-
14 ed States upon certiorari or certification as provided
15 in section 1254 of title 28, United States Code.

16 “(3) STANDARD OF REVIEW.—The findings of
17 fact by the Secretary, if supported by substantial
18 evidence, shall be conclusive, but the court, for good
19 cause shown, may remand the case to the Secretary
20 to take further evidence, and the Secretary may
21 thereupon make new or modified findings of fact and
22 may modify the Secretary's previous action, and
23 shall file in the court the record of the further pro-
24 ceedings. Such new or modified findings of fact shall

1 likewise be conclusive if supported by substantial evi-
2 dence.

3 **“SEC. 617. ADMINISTRATION.**

4 “(a) RESPONSIBILITIES OF SECRETARY.—In carry-
5 ing out this part, the Secretary shall—

6 “(1) cooperate with, and (directly or by grant
7 or contract) furnish technical assistance necessary
8 to, the State in matters relating to—

9 “(A) the education of children with disabil-
10 ities; and

11 “(B) carrying out this part; and

12 “(2) provide short-term training programs and
13 institutes.

14 “(b) RULES AND REGULATIONS.—In carrying out
15 the provisions of this part, the Secretary shall issue regu-
16 lations under this Act only to the extent that such regula-
17 tions are necessary to ensure that there is compliance with
18 the specific requirements of this Act.

19 “(c) CONFIDENTIALITY.—The Secretary shall take
20 appropriate action, in accordance with the provisions of
21 section 444 of the General Education Provisions Act (20
22 U.S.C. 1232g), to assure the protection of the confiden-
23 tiality of any personally identifiable data, information, and
24 records collected or maintained by the Secretary and by

1 State and local educational agencies pursuant to the provi-
 2 sions of this part.

3 “(d) PERSONNEL.—The Secretary is authorized to
 4 hire qualified personnel necessary to conduct data collec-
 5 tion and evaluation activities authorized by subsection (a)
 6 and section 618 without regard to the provisions of title
 7 5, United States Code, relating to appointments in the
 8 competitive service and without regard to chapter 51 and
 9 subchapter III of chapter 53 of such title relating to classi-
 10 fication and general schedule pay rates, except that no
 11 more than twenty such personnel shall be employed at any
 12 time.

13 **“SEC. 618. PROGRAM INFORMATION.**

14 “(a) IN GENERAL.—Each State that receives assist-
 15 ance under this part, and the Secretary of the Interior,
 16 shall provide data, which may be based on a sampling of
 17 data, each year to the Secretary on—

18 “(1) the number of children, categorized by
 19 race, ethnicity, gender, and disability, who are re-
 20 ceiving—

21 “(A) a free appropriate public education;

22 or

23 “(B) early intervention services because—

24 “(i) such children have developmental
 25 delays; or

1 “(ii) such children have a diagnosed
2 physical or mental condition that has a
3 high probability of resulting in devel-
4 opmental delay;

5 “(2) the progress of the State, and of the chil-
6 dren with disabilities in the State, toward meeting
7 the goals established under section 612(14);

8 “(3) the types of early intervention services pro-
9 vided to such children;

10 “(4) the number of children with disabilities,
11 categorized by race, ethnicity, gender, and disabil-
12 ity—

13 “(A) participating in regular education
14 programs;

15 “(B) in separate classes, separate schools
16 or facilities, or public or private residential fa-
17 cilities;

18 “(C) who have been otherwise removed
19 from the regular education environment; and

20 “(D) in various early intervention settings;

21 “(5) for each year of age from age 14 to 21,
22 the number of children with disabilities, categorized
23 by race, ethnicity, gender, and disability, who, be-
24 cause of program completion or for other reasons,
25 stopped receiving special education, and the reasons

1 why such children stopped receiving such special
2 education;

3 “(6)(A) the number of children with disabilities,
4 categorized by race, ethnicity, gender, and disability,
5 who, under section 615(k), are removed to an in-
6 terim alternative educational setting;

7 “(B) the acts or items precipitating such re-
8 movals; and

9 “(C) the number of children with disabilities
10 who are expelled from school without receiving serv-
11 ices; and

12 “(7) any other information required by the Sec-
13 retary.

14 “(b) DISPROPORTIONALITY.—

15 “(1) IN GENERAL.—Each State that receives
16 assistance under this part, and the Secretary of the
17 Interior, shall provide for the collection and exam-
18 ination of data to determine if significant
19 disproportionality based on race is occurring in the
20 State with respect to—

21 “(A) the identification of children as chil-
22 dren with disabilities, including the identifica-
23 tion of children as children with disabilities in
24 accordance with a particular impairment de-
25 scribed in section 602(3); and

1 “(B) the placement in particular edu-
2 cational settings of such children.

3 “(2) REVIEW AND REVISION OF POLICIES,
4 PRACTICES, AND PROCEDURES.—In the case of a de-
5 termination of significant disproportionality with re-
6 spect to the identification of children as children
7 with disabilities, or the placement in particular edu-
8 cational settings of such children, in accordance with
9 paragraph (1), the State or the Secretary of the In-
10 terior, as the case may be, shall provide for the re-
11 view and, if appropriate, revision of the policies, pro-
12 cedures, and practices used in such identification or
13 placement to ensure that such policies, procedures,
14 and practices comply with the requirements of this
15 Act.

16 **“SEC. 619. PRESCHOOL GRANTS.**

17 “(a) IN GENERAL.—The Secretary shall provide
18 grants under this section to assist States to provide special
19 education and related services, in accordance with this
20 part—

21 “(1) to children with disabilities aged 3 to 5, in-
22 clusive; and

23 “(2) at the State’s discretion, to 2-year-old chil-
24 dren with disabilities who will turn 3 during the
25 school year.

1 “(b) ELIGIBILITY.—A State shall be eligible for a
2 grant under this section if such State—

3 “(1) is eligible under section 612 to receive a
4 grant under this part; and

5 “(2) makes a free appropriate public education
6 available to all children with disabilities, aged 3 to
7 5, inclusive, residing in the State.

8 “(c) AMOUNT.—

9 “(1) IN GENERAL.—From the amount appro-
10 priated for any fiscal year pursuant to the author-
11 ization of appropriations under subsection (m), the
12 Secretary shall allot to each eligible State the
13 amount it received for fiscal year 1996 under this
14 section (as this section was in effect on the day be-
15 fore the date of the enactment of the IDEA Im-
16 provement Act of 1996).

17 “(2) INSUFFICIENT FUNDS.—

18 “(A) IN GENERAL.—If the amount appro-
19 priated under subsection (m) for a fiscal year is
20 insufficient to make the full allotments de-
21 scribed in paragraph (1), the Secretary shall—

22 “(i) first, reduce the allocation to any
23 State whose number of children aged 3 to
24 5, inclusive, is less than the number of
25 such children in such State in fiscal year

1 1995 by the same percentage by which
2 such number of children declined from the
3 number of children in fiscal year 1995; and

4 “(ii) second, if necessary, ratably re-
5 duce the allocations of all States, including
6 those allocations reduced under clause (i).

7 “(B) AVAILABILITY OF ADDITIONAL
8 FUNDS.—If additional funds become available
9 to make allocations under this section, the allo-
10 cations that were reduced under subparagraph
11 (A) shall be increased on the same basis as
12 such allocations were reduced.

13 “(d) ALLOTMENT OF REMAINING FUNDS.—After
14 making allotments under subsection (c), the Secretary
15 shall allot any remaining funds to eligible States on the
16 basis of their relative population of children aged 3 to 5,
17 inclusive.

18 “(e) SPECIAL RULE WITH RESPECT TO PUERTO
19 RICO.—Notwithstanding any other provision of this sub-
20 section, the amount allotted to Puerto Rico for a fiscal
21 year shall bear the same or lower proportion to the amount
22 appropriated pursuant to subsection (m) as the amount
23 received by Puerto Rico under this section for fiscal year
24 1996 bears to the aggregate of the amounts received by
25 all States under this section for fiscal year 1996.

1 “(f) DETERMINATION OF POPULATION FIGURES.—

2 For the purpose of providing grants under this section,
3 the Secretary shall use the most recent population data
4 that are available and satisfactory to the Secretary.

5 “(g) RESERVATION FOR STATE ACTIVITIES.—A

6 State may reserve not more than 25 percent of the amount
7 allotted to the State under this section for a fiscal year
8 for administration and other State-level activities in ac-
9 cordance with subsections (h) and (i).

10 “(h) STATE ADMINISTRATION.—

11 “(1) IN GENERAL.—A State may use up to 3
12 percent of the amount allotted to the State under
13 this section for a fiscal year for the purpose of ad-
14 ministering this section, including the coordination
15 of activities under this part with, and providing
16 technical assistance to, other programs that provide
17 services to children with disabilities.

18 “(2) USE OF AMOUNTS FOR ADMINISTRATION

19 OF PART C.—If the State educational agency is the
20 lead agency for the State under part C, amounts de-
21 scribed in paragraph (1) may also be used for the
22 administration of such part C.

23 “(i) OTHER STATE-LEVEL ACTIVITIES.—Each State

24 shall use any funds it retains under subsection (g) and
25 does not use for administration under subsection (h)—

1 “(1) for support services (including establishing
2 and implementing the mediation process required by
3 section 615(d)), which may benefit children with dis-
4 abilities younger than 3 or older than 5 as long as
5 those services also benefit children with disabilities
6 aged 3 to 5, inclusive;

7 “(2) for direct services for children eligible for
8 services under this section;

9 “(3) to develop a State improvement plan under
10 part D;

11 “(4) for activities at the State and local levels
12 to meet the performance goals established by the
13 State under section 612(a)(14) and to support im-
14 plementation of the State improvement plan under
15 part D if the State receives funds under that part;

16 or

17 “(5) to supplement other funds used to develop
18 and implement a Statewide coordinated services sys-
19 tem designed to improve results for children and
20 families, including children with disabilities and their
21 families, but not to exceed one percent of the
22 amount received by the State under this section for
23 a fiscal year.

24 “(j) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
25 CIES.—

1 “(1) REQUIREMENT TO MAKE SUBGRANTS.—

2 Each State that receives a grant under this section
3 for any fiscal year shall distribute at least 75 per-
4 cent of the grant funds to local educational agencies
5 in the State, and to State agencies that received
6 funds under section 614A(a) (as such section was in
7 effect on the day before the date of the enactment
8 of the IDEA Improvement Act of 1996) for fiscal
9 year 1996, that have established their eligibility
10 under section 613.

11 “(2) METHODS OF DISTRIBUTION.—A State
12 may distribute funds under paragraph (1) on the
13 basis of—

14 “(A) total school age population;

15 “(B) school enrollment;

16 “(C) numbers of children with disabilities
17 aged 3 to 5, inclusive, receiving a free appro-
18 priate public education;

19 “(D) allocations for previous fiscal years;

20 “(E) any two or more of the factors de-
21 scribed in subparagraphs (A) through (D); or

22 “(F) poverty, in combination with one or
23 more of the factors described in subparagraphs
24 (A) through (D).

1 “(k) PART C INAPPLICABLE.—Part C of this Act
2 does not apply to any child with a disability receiving a
3 free appropriate public education, in accordance with this
4 part, with funds received under this section.

5 “(l) PROHIBITION ON CONSOLIDATION OF GRANTS
6 FOR TERRITORIES.—The provisions of section 501 of
7 Public Law 95–134 (48 U.S.C. 1469a; relating to the con-
8 solidation of one or more grants provided to certain terri-
9 tories) shall not apply with respect to amounts provided
10 to a territory under a grant under this section.

11 “(m) AUTHORIZATION OF APPROPRIATIONS.—For
12 the purpose of carrying out this section, there are author-
13 ized to be appropriated to the Secretary such sums as may
14 be necessary.

15 **“PART C—INFANTS AND TODDLERS WITH**
16 **DISABILITIES**

17 **“SEC. 631. FINDINGS AND POLICY.**

18 “(a) FINDINGS.—The Congress finds that there is an
19 urgent and substantial need—

20 “(1) to enhance the development of infants and
21 toddlers with disabilities and to minimize their po-
22 tential for developmental delay;

23 “(2) to reduce the educational costs to our soci-
24 ety, including our Nation’s schools, by minimizing
25 the need for special education and related services

1 after infants and toddlers with disabilities reach
2 school age;

3 “(3) to minimize the likelihood of institutional-
4 ization of individuals with disabilities and maximize
5 the potential for their independently living in society;

6 “(4) to enhance the capacity of families to meet
7 the special needs of their infants and toddlers with
8 disabilities; and

9 “(5) to enhance the capacity of State and local
10 agencies and service providers to identify, evaluate,
11 and meet the needs of historically underrepresented
12 populations, particularly minority, low-income, inner-
13 city, and rural populations.

14 “(b) POLICY.—It is therefore the policy of the United
15 States to provide financial assistance to States—

16 “(1) to develop and implement a statewide,
17 comprehensive, coordinated, multidisciplinary, inter-
18 agency system of early intervention services for in-
19 fants and toddlers with disabilities and their fami-
20 lies;

21 “(2) to facilitate the coordination of payment
22 for early intervention services from Federal, State,
23 local, and private sources (including public and pri-
24 vate insurance coverage); and

1 “(3) to enhance their capacity to provide qual-
2 ity early intervention services and expand and im-
3 prove existing early intervention services being pro-
4 vided to infants and toddlers with disabilities and
5 their families.

6 **“SEC. 632. DEFINITIONS.**

7 “As used in this part:

8 “(1) AT-RISK INFANT OR TODDLER.—The term
9 ‘at-risk infant or toddler’ means an individual under
10 3 years of age who would be at risk of experiencing
11 a substantial developmental delay if early interven-
12 tion services were not provided to the individual.

13 “(2) COUNCIL.—The term ‘council’ means a
14 State interagency coordinating council established
15 under section 641.

16 “(3) DEVELOPMENTAL DELAY.—The term ‘de-
17 velopmental delay’, when used with respect to an in-
18 dividual residing in a State, has the meaning given
19 such term by the State under section 635(a)(1).

20 “(4) EARLY INTERVENTION SERVICES.—The
21 term ‘early intervention services’ means developmen-
22 tal services which—

23 “(A) are provided under public supervision;

24 “(B) are provided at no cost except where

25 Federal or State law provides for a system of

1 payments by families, including a schedule of
2 sliding fees;

3 “(C) are designed to meet the developmen-
4 tal needs of an infant or toddler with a disabil-
5 ity in any one or more of the following areas—

6 “(i) physical development;

7 “(ii) cognitive development;

8 “(iii) communication development;

9 “(iv) social or emotional development;

10 or

11 “(v) adaptive development;

12 “(D) meet the standards of the State in
13 which they are provided, including the require-
14 ments of this part;

15 “(E) include—

16 “(i) family training, counseling, and
17 home visits;

18 “(ii) special instruction;

19 “(iii) speech-language pathology and
20 audiology services;

21 “(iv) occupational therapy;

22 “(v) physical therapy;

23 “(vi) psychological services;

24 “(vii) service coordination services;

1 “(viii) medical services only for diag-
2 nostic or evaluation purposes;

3 “(ix) early identification, screening,
4 and assessment services;

5 “(x) health services necessary to en-
6 able the infant or toddler to benefit from
7 the other early intervention services;

8 “(xi) social work services;

9 “(xii) vision services;

10 “(xiii) assistive technology devices and
11 assistive technology services; and

12 “(xiv) transportation and related costs
13 that are necessary to enable an infant or
14 toddler and the infant’s or toddler’s family
15 to receive another service described in this
16 paragraph;

17 “(F) are provided by qualified personnel,
18 including—

19 “(i) special educators;

20 “(ii) speech-language pathologists and
21 audiologists;

22 “(iii) occupational therapists;

23 “(iv) physical therapists;

24 “(v) psychologists;

25 “(vi) social workers;

1 “(vii) nurses;

2 “(viii) nutritionists;

3 “(ix) family therapists;

4 “(x) orientation and mobility special-
5 ists; and

6 “(xi) pediatricians and other physi-
7 cians;

8 “(G) to the maximum extent appropriate,
9 are provided in natural environments, including
10 the home, and community settings in which
11 children without disabilities participate; and

12 “(H) are provided in conformity with an
13 individualized family service plan adopted in ac-
14 cordance with section 636.

15 “(5) INFANT OR TODDLER WITH A DISABIL-
16 ITY.—The term ‘infant or toddler with a disabili-
17 ty’—

18 “(A) means an individual under 3 years of
19 age who needs early intervention services be-
20 cause the individual—

21 “(i) is experiencing developmental
22 delays, as measured by appropriate diag-
23 nostic instruments and procedures in one
24 or more of the areas of cognitive develop-
25 ment, physical development, communica-

1 tion development, social or emotional devel-
2 opment, and adaptive development; or

3 “(ii) has a diagnosed physical or men-
4 tal condition which has a high probability
5 of resulting in developmental delay; and

6 “(B) may also include, at a State’s discre-
7 tion, at-risk infants and toddlers.

8 **“SEC. 633. GENERAL AUTHORITY.**

9 “The Secretary shall, in accordance with this part,
10 make grants to States (from their allocations under sec-
11 tion 643) to assist each State to maintain and implement
12 a statewide, comprehensive, coordinated, multidisciplinary,
13 interagency system to provide early intervention services
14 for infants and toddlers with disabilities and their families.

15 **“SEC. 634. ELIGIBILITY.**

16 “In order to be eligible for a grant under section 633,
17 a State shall demonstrate to the Secretary that the
18 State—

19 “(1) has adopted a policy that appropriate early
20 intervention services are available to all infants and
21 toddlers with disabilities in the State and their fami-
22 lies, including Indian infants and toddlers with dis-
23 abilities and their families residing on a reservation
24 geographically located in the State; and

1 “(2) has in effect a statewide system that meets
2 the requirements of section 635.

3 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

4 “(a) IN GENERAL.—A statewide system described in
5 section 633 shall include, at a minimum, the following
6 components:

7 “(1) A definition of the term ‘developmental
8 delay’ that will be used by the State in carrying out
9 programs under this part.

10 “(2) A timely, comprehensive, multidisciplinary
11 evaluation of the functioning of each infant or tod-
12 dler with a disability in the State, and a family-
13 directed identification of the needs of each family of
14 such an infant or toddler, to appropriately assist in
15 the development of the infant or toddler.

16 “(3) For each infant or toddler with a disability
17 in the State, an individualized family service plan in
18 accordance with section 636, including service co-
19 ordination services in accordance with such service
20 plan.

21 “(4) A comprehensive child find system, con-
22 sistent with part B, including a system for making
23 referrals to service providers that includes timelines
24 and provides for participation by primary referral
25 sources.

1 “(5) A public awareness program focusing on
2 early identification of infants and toddlers with dis-
3 abilities, including the preparation and dissemination
4 by the lead agency designated or established under
5 paragraph (8) to all primary referral sources, espe-
6 cially hospitals and physicians, of information for
7 parents on the availability of early intervention serv-
8 ices, and procedures for determining the extent to
9 which such sources disseminate such information to
10 parents of infants and toddlers.

11 “(6) A central directory which includes infor-
12 mation on early intervention services, resources, and
13 experts available in the State and research and dem-
14 onstration projects being conducted in the State.

15 “(7) A comprehensive system of personnel de-
16 velopment, including the training of paraprofes-
17 sionals and the training of primary referral sources
18 respecting the basic components of early intervention
19 services available in the State, that is consistent
20 with the comprehensive system of personnel develop-
21 ment described in section 612(a)(13) (or with the
22 personnel development requirements for State im-
23 provement plans under section 683) and may in-
24 clude—

1 “(A) implementing innovative strategies
2 and activities for the recruitment and retention
3 of early education service providers;

4 “(B) promoting the preparation of early
5 intervention providers who are fully and appro-
6 priately qualified to provide early intervention
7 services under this part;

8 “(C) training personnel to work in rural
9 and inner city areas; and

10 “(D) training personnel to coordinate tran-
11 sition services for infants and toddlers served
12 under this part from an early intervention pro-
13 gram under this part to preschool or other ap-
14 propriate services.

15 “(8) Policies and procedures relating to the es-
16 tablishment and maintenance of standards to ensure
17 that personnel necessary to carry out this part are
18 appropriately and adequately prepared and trained,
19 including—

20 “(A) the establishment and maintenance of
21 standards which are consistent with any State
22 approved or recognized certification, licensing,
23 registration, or other comparable requirements
24 which apply to the area in which such personnel
25 are providing early intervention services; and

1 “(B) subject to subsection (b), to the ex-
2 tent such standards are not based on the high-
3 est requirements in the State applicable to a
4 specific profession or discipline, the steps the
5 State is taking to require the retraining or hir-
6 ing of personnel that meet appropriate profes-
7 sional requirements in the State;

8 except that nothing in this part, including this para-
9 graph, prohibits the use of paraprofessionals and as-
10 sistants who are appropriately trained and super-
11 vised, in accordance with State law, regulations, or
12 written policy, to assist in the provision of early
13 intervention services to infants and toddlers with
14 disabilities under this part.

15 “(9) A single line of responsibility in a lead
16 agency designated or established by the Governor for
17 carrying out—

18 “(A) the general administration and super-
19 vision of programs and activities receiving as-
20 sistance under section 633, and the monitoring
21 of programs and activities used by the State to
22 carry out this part, whether or not such pro-
23 grams or activities are receiving assistance
24 made available under section 633, to ensure
25 that the State complies with this part;

1 “(B) the identification and coordination of
2 all available resources within the State from
3 Federal, State, local and private sources;

4 “(C) the assignment of financial respon-
5 sibility in accordance with section 637(a)(1) to
6 the appropriate agencies;

7 “(D) the development of procedures to en-
8 sure that services are provided to infants and
9 toddlers and their families under this part in a
10 timely manner pending the resolution of any
11 disputes among public agencies or service pro-
12 viders;

13 “(E) the resolution of intra- and inter-
14 agency disputes; and

15 “(F) the entry into formal interagency
16 agreements that define the financial responsibil-
17 ity of each agency for paying for early interven-
18 tion services (consistent with State law) and
19 procedures for resolving disputes and that in-
20 clude all additional components necessary to en-
21 sure meaningful cooperation and coordination.

22 “(10) A policy pertaining to the contracting or
23 making of other arrangements with service providers
24 to provide early intervention services in the State,
25 consistent with the provisions of this part, including

1 the contents of the application used and the condi-
2 tions of the contract or other arrangements.

3 “(11) A procedure for securing timely reim-
4 bursement of funds used under this part in accord-
5 ance with section 640(a).

6 “(12) Procedural safeguards with respect to
7 programs under this part, as required by section
8 639.

9 “(13) A system for compiling data requested by
10 the Secretary under section 618 that relates to this
11 part.

12 “(14) A State interagency coordinating council
13 that meets the requirements of section 641.

14 “(15) Policies and procedures to ensure that,
15 consistent with section 636(d)(5)—

16 “(A) to the maximum extent appropriate,
17 early intervention services are provided in natu-
18 ral environments; and

19 “(B) the provision of early intervention
20 services for any infant or toddler occurs in a
21 setting other than a natural environment only
22 when early intervention cannot be achieved sat-
23 isfactorily for such infant or toddler in a natu-
24 ral environment.

1 “(b) MODIFICATION OF PERSONNEL REQUIRE-
2 MENT.—If a State determines that the requirement of
3 subsection (a)(8)(B) would significantly inhibit the ability
4 of the State to contract with, or employ, an appropriate
5 number and types of personnel to provide early interven-
6 tion services to infants and toddlers with disabilities in
7 a geographic region, the State may, subject to public no-
8 tice and comment, temporarily suspend the requirement
9 for the region, in a manner consistent with State law and
10 for a period not exceeding 3 years, with respect to the
11 most qualified available individuals in shortage areas who
12 are making annual progress in applicable coursework.

13 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

14 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—
15 A statewide system described in section 633 shall provide,
16 at a minimum, for each infant or toddler with a disability,
17 and the infant’s or toddler’s family, to receive—

18 “(1) a multidisciplinary assessment of the
19 unique strengths and needs of the infant or toddler
20 and the identification of services appropriate to meet
21 such needs;

22 “(2) a family-directed assessment of the re-
23 sources, priorities, and concerns of the family and
24 the identification of the supports and services nec-

1 essary to enhance the family’s capacity to meet the
2 developmental needs of the infant or toddler; and

3 “(3) a written individualized family service plan
4 developed by a multidisciplinary team, including the
5 parents, as required by subsection (e).

6 “(b) PERIODIC REVIEW.—The individualized family
7 service plan shall be evaluated once a year and the family
8 shall be provided a review of the plan at 6-month intervals
9 (or more often where appropriate based on infant or tod-
10 dler and family needs).

11 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
12 vidualized family service plan shall be developed within a
13 reasonable time after the assessment required by sub-
14 section (a)(1) is completed. With the parents’ consent,
15 early intervention services may commence prior to the
16 completion of such assessment.

17 “(d) CONTENT OF PLAN.—The individualized family
18 service plan shall be in writing and contain—

19 “(1) a statement of the infant’s or toddler’s
20 present levels of physical development, cognitive de-
21 velopment, communication development, social or
22 emotional development, and adaptive development,
23 based on objective criteria;

24 “(2) a statement of the family’s resources, pri-
25 orities, and concerns relating to enhancing the devel-

1 opment of the family’s infant or toddler with a dis-
2 ability;

3 “(3) a statement of the major outcomes ex-
4 pected to be achieved for the infant or toddler and
5 the family, and the criteria, procedures, and
6 timelines used to determine the degree to which
7 progress toward achieving the outcomes is being
8 made and whether modifications or revisions of the
9 outcomes or services are necessary;

10 “(4) a statement of specific early intervention
11 services necessary to meet the unique needs of the
12 infant or toddler and the family, including the fre-
13 quency, intensity, and method of delivering services;

14 “(5) a statement of the natural environments in
15 which early intervention services shall appropriately
16 be provided, including a justification of the extent,
17 if any, to which such services will not be provided in
18 a natural environment;

19 “(6) the projected dates for initiation of serv-
20 ices and the anticipated duration of such services;

21 “(7) the identification of the service coordinator
22 from the profession most immediately relevant to the
23 infant’s or toddler’s or family’s needs (or who is oth-
24 erwise qualified to carry out all applicable respon-
25 sibilities under this part) who will be responsible for

1 the implementation of the plan and coordination
2 with other agencies and persons; and

3 “(8) the steps to be taken to support the transi-
4 tion of the toddler with a disability to preschool or
5 other appropriate services.

6 “(e) PARENTAL CONSENT.—The contents of the indi-
7 vidualized family service plan shall be fully explained to
8 the parents and informed written consent from such par-
9 ents shall be obtained prior to the provision of early inter-
10 vention services described in such plan. If such parents
11 do not provide such consent with respect to a particular
12 early intervention service, then the early intervention serv-
13 ices to which such consent is obtained shall be provided.

14 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

15 “(a) APPLICATION.—A State desiring to receive a
16 grant under section 633 shall submit an application to the
17 Secretary at such time and in such manner as the Sec-
18 retary may reasonably require. Such application shall con-
19 tain—

20 “(1) a designation of the lead agency in the
21 State that will be responsible for the administration
22 of funds provided under section 633;

23 “(2) a designation of a person responsible for
24 assigning financial responsibility among appropriate
25 agencies;

1 “(3) information demonstrating eligibility of the
2 State under section 634, including—

3 “(A) information demonstrating to the
4 Secretary’s satisfaction that the State has in ef-
5 fect the statewide system required by section
6 633; and

7 “(B) a description of services to be pro-
8 vided to infants and toddlers with disabilities
9 and their families through the system;

10 “(4) a description of the uses for which funds
11 will be expended in accordance with this part;

12 “(5) a description of the procedure used to en-
13 sure that resources are made available under this
14 part for all geographic areas within the State;

15 “(6) a description of State policies and proce-
16 dures that ensure that, prior to the adoption by the
17 State of any other policy or procedure necessary to
18 meet the requirements of this part, there are public
19 hearings, adequate notice of the hearings, and an
20 opportunity for comment available to the general
21 public, including individuals with disabilities and
22 parents of infants and toddlers with disabilities;

23 “(7) a description of the policies and procedures
24 to be used—

1 “(A) to ensure a smooth transition for tod-
2 dlers receiving early intervention services under
3 this part to preschool or other appropriate serv-
4 ices, including a description of how—

5 “(i) the families of such toddlers will
6 be included in the transition plans required
7 by subparagraph (C); and

8 “(ii) the lead agency designated or es-
9 tablished under section 635(a) will—

10 “(I) notify the local educational
11 agency for the area in which such a
12 child resides that the child will shortly
13 reach the age of eligibility for pre-
14 school services under part B, as deter-
15 mined in accordance with State law;

16 “(II) in the case of such a child
17 who may be eligible for such preschool
18 services, with the approval of the fam-
19 ily of the child, convene a conference
20 among the lead agency, the family,
21 and the local educational agency at
22 least 90 days (and at the discretion of
23 all such parties, up to 6 months) be-
24 fore the child is eligible for the pre-
25 school services, to discuss any such

1 services that the child may receive;
2 and

3 “(III) in the case of such a child
4 who may not be eligible for such pre-
5 school services, with the approval of
6 the family, make reasonable efforts to
7 convene a conference among the lead
8 agency, the family, and providers of
9 other appropriate services for children
10 who are not eligible for preschool serv-
11 ices under part B, to discuss the ap-
12 propriate services that the child may
13 receive;

14 “(B) to review the child’s program options
15 for the period from the child’s third birthday
16 through the remainder of the school year; and

17 “(C) to establish a transition plan; and

18 “(8) such other information and assurances as
19 the Secretary may reasonably require.

20 “(b) ASSURANCES.—The application described in
21 subsection (a) shall contain the following:

22 “(1) A satisfactory assurance that the State
23 will—

24 “(A) make such reports in such form and
25 containing such information as the Secretary

1 may require to carry out the Secretary's func-
2 tions under this part; and

3 “(B) keep such records and afford such ac-
4 cess thereto as the Secretary may find nec-
5 essary to assure the correctness and verification
6 of such reports and proper disbursement of
7 Federal funds under this part.

8 “(2) A satisfactory assurance that Federal
9 funds made available under section 633 will be used
10 to supplement and increase the level of State and
11 local funds expended for infants and toddlers with
12 disabilities and their families under this part and in
13 no case to supplant such State and local funds.

14 “(3) Such other information and assurances as
15 the Secretary may reasonably require by regulation.

16 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
17 TION.—The Secretary may not disapprove such an appli-
18 cation unless the Secretary determines, after notice and
19 opportunity for a hearing, that the application fails to
20 comply with the requirements of this section.

21 “(d) SUBSEQUENT STATE APPLICATION.—If a State
22 has on file with the Secretary a policy, procedure, or as-
23 surance that demonstrates that the State meets a require-
24 ment of this section, including any policy or procedure
25 filed under part H (as in effect before the date of the en-

1 actment of the IDEA Improvement Act of 1996), the Sec-
2 retary shall consider the State to have met the require-
3 ment for purposes of receiving a grant under this part.

4 “(e) MODIFICATION OF APPLICATION.—An applica-
5 tion submitted by a State in accordance with this section
6 shall remain in effect until the State submits to the Sec-
7 retary such modifications as the State determines nec-
8 essary. This section shall apply to a modification of an
9 application to the same extent and in the same manner
10 as this section applies to the original application.

11 **“SEC. 638. USES OF FUNDS.**

12 “In addition to using funds provided under section
13 633 to maintain and implement the statewide system re-
14 quired by such section, a State may use such funds—

15 “(1) for direct early intervention services for in-
16 fants and toddlers with disabilities, and their fami-
17 lies, under this part that are not otherwise funded
18 through other public or private sources;

19 “(2) to expand and improve on services for in-
20 fants and toddlers and their families under this part
21 that are otherwise available; and

22 “(3) to provide a free appropriate public edu-
23 cation, in accordance with part B, to children with
24 disabilities from their third birthday to the begin-
25 ning of the following school year.

1 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

2 “(a) MINIMUM PROCEDURES.—The procedural safe-
3 guards required to be included in a statewide system
4 under section 635(a)(10) shall provide, at a minimum, the
5 following:

6 “(1) The timely administrative resolution of
7 complaints by parents. Any party aggrieved by the
8 findings and decision regarding an administrative
9 complaint shall have the right to bring a civil action
10 with respect to the complaint in any State court of
11 competent jurisdiction or in a district court of the
12 United States without regard to the amount in con-
13 troversy. In any action brought under this para-
14 graph, the court shall receive the records of the ad-
15 ministrative proceedings, shall hear additional evi-
16 dence at the request of a party, and, basing its deci-
17 sion on the preponderance of the evidence, shall
18 grant such relief as the court determines is appro-
19 priate.

20 “(2) The right to confidentiality of personally
21 identifiable information, including the right of par-
22 ents to written notice of and written consent to the
23 exchange of such information among agencies con-
24 sistent with Federal and State law.

25 “(3) The right of the parents to determine
26 whether they, their infant or toddler, or other family

1 members will accept or decline any early intervention
2 service under this part in accordance with State law
3 without jeopardizing other early intervention services
4 under this part.

5 “(4) The opportunity for parents to examine
6 records relating to assessment, screening, eligibility
7 determinations, and the development and implemen-
8 tation of the individualized family service plan.

9 “(5) Procedures to protect the rights of the in-
10 fant or toddler whenever the parents of the child are
11 not known or cannot be found or the child is a ward
12 of the State, including the assignment of an individ-
13 ual (who shall not be an employee of the State or
14 any person, or any employee of a person, providing
15 early intervention services to the infant or toddler or
16 any family member of the infant or toddler) to act
17 as a surrogate for the parents.

18 “(6) Written prior notice to the parents of the
19 infant or toddler with a disability whenever the State
20 agency or service provider proposes to initiate or
21 change or refuses to initiate or change the identifica-
22 tion, evaluation, placement, or the provision of ap-
23 propriate early intervention services to the infant or
24 toddler with a disability.

1 “(7) Procedures designed to assure that the no-
2 tice required by paragraph (6) fully informs the par-
3 ents, in the parents’ native language, unless it clear-
4 ly is not feasible to do so, of all procedures available
5 pursuant to this section.

6 “(8) The right of parents to use mediation in
7 accordance with section 615(e), except that—

8 “(A) any reference in such section to a
9 State educational agency shall be considered to
10 be a reference to a State’s lead agency estab-
11 lished or designated under section 635(a)(8);

12 “(B) any reference in such section to a
13 local educational agency shall be considered to
14 be a reference to a local service provider or the
15 State’s lead agency under this part, as the case
16 may be; and

17 “(C) any reference in such section to the
18 provision of free appropriate public education to
19 children with disabilities shall be considered to
20 be a reference to the provision of appropriate
21 early intervention services to infants and tod-
22 dlers with disabilities.

23 “(b) SERVICES DURING PENDENCY OF PROCEED-
24 INGS.—During the pendency of any proceeding or action
25 involving a complaint by the parents of an infant or tod-

1 dler with a disability, unless the State agency and the par-
2 ents otherwise agree, the infant or toddler shall continue
3 to receive the appropriate early intervention services cur-
4 rently being provided or, if applying for initial services,
5 shall receive the services not in dispute.

6 **“SEC. 640. PAYOR OF LAST RESORT.**

7 “(a) NONSUBSTITUTION.—Funds provided under
8 section 643 may not be used to satisfy a financial commit-
9 ment for services which would have been paid for from
10 another public or private source but for the enactment of
11 this part, except that whenever considered necessary to
12 prevent a delay in the receipt of appropriate early inter-
13 vention services by an infant, toddler, or family in a timely
14 fashion, funds provided under section 643 may be used
15 to pay the provider of services pending reimbursement
16 from the agency which has ultimate responsibility for the
17 payment.

18 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
19 this part shall be construed to permit the State to reduce
20 medical or other assistance available or to alter eligibility
21 under title V of the Social Security Act (relating to mater-
22 nal and child health) or title XIX of the Social Security
23 Act (relating to medicaid for infants or toddlers with dis-
24 abilities) within the State.

1 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

2 “(a) ESTABLISHMENT.—

3 “(1) IN GENERAL.—A State that desires to re-
4 ceive financial assistance under this part shall estab-
5 lish a State interagency coordinating council.

6 “(2) APPOINTMENT.—The council shall be ap-
7 pointed by the Governor. In making appointments to
8 the council, the Governor shall ensure that the mem-
9 bership of the council reasonably represents the pop-
10 ulation of the State.

11 “(3) CHAIRPERSON.—The Governor shall des-
12 ignate a member of the council to serve as the chair-
13 person of the Council, or shall require the council to
14 so designate such a member. Any member of the
15 council who is a representative of the lead agency
16 designated under section 635(b)(8) may not serve as
17 the chairperson of the council.

18 “(b) COMPOSITION.—

19 “(1) IN GENERAL.—The council shall be com-
20 posed as follows:

21 “(A) PARENTS.—At least 20 percent of
22 the members shall be parents of infants or tod-
23 dlers with disabilities or children with disabili-
24 ties aged 12 or younger, with knowledge of, or
25 experience with, programs for infants and tod-
26 dlers with disabilities. At least one such mem-

1 ber shall be a parent of an infant or toddler
2 with a disability or a child with a disability
3 aged 6 or younger.

4 “(B) SERVICE PROVIDERS.—At least 20
5 percent of the members shall be public or pri-
6 vate providers of early intervention services.

7 “(C) STATE LEGISLATURE.—At least one
8 member shall be from the State legislature.

9 “(D) PERSONNEL PREPARATION.—At least
10 one member shall be involved in personnel prep-
11 aration.

12 “(E) AGENCY FOR EARLY INTERVENTION
13 SERVICES.—At least one member shall be from
14 each of the State agencies involved in the provi-
15 sion of, or payment for, early intervention serv-
16 ices to infants and toddlers with disabilities and
17 their families and shall have sufficient authority
18 to engage in policy planning and implementa-
19 tion on behalf of such agencies.

20 “(F) AGENCY FOR PRESCHOOL SERV-
21 ICES.—At least one member shall be from the
22 State educational agency responsible for pre-
23 school services to children with disabilities and
24 shall have sufficient authority to engage in pol-

1 icy planning and implementation on behalf of
2 such agency.

3 “(G) AGENCY FOR INSURANCE.—At least
4 one member shall be from the agency respon-
5 sible for the State governance of insurance, es-
6 pecially in the area of health insurance.

7 “(H) HEAD START AGENCY.—A represent-
8 ative from a Head Start agency or program in
9 the State.

10 “(I) A representative from a State agency
11 responsible for child care.

12 “(2) OTHER MEMBERS.—The council may in-
13 clude other members selected by the Governor, in-
14 cluding a representative from the Bureau of Indian
15 Affairs, or where there is no BIA operated or funded
16 school, from the Indian Health Service or the tribe/
17 tribal council.

18 “(c) MEETINGS.—The council shall meet at least
19 quarterly and in such places as it deems necessary. The
20 meetings shall be publicly announced, and, to the extent
21 appropriate, open and accessible to the general public.

22 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
23 proval of the Governor, the council may prepare and ap-
24 prove a budget using funds under this part to conduct
25 hearings and forums, to reimburse members of the council

1 for reasonable and necessary expenses for attending coun-
 2 cil meetings and performing council duties (including child
 3 care for parent representatives), to pay compensation to
 4 a member of the council if such member is not employed
 5 or must forfeit wages from other employment when per-
 6 forming official council business, to hire staff, and to ob-
 7 tain the services of such professional, technical, and cleri-
 8 cal personnel as may be necessary to carry out its func-
 9 tions under this part.

10 “(e) FUNCTIONS OF COUNCIL.—

11 “(1) DUTIES.—The council shall—

12 “(A) advise and assist the lead agency des-
 13 ignated or established under section 635(b)(8)
 14 in the performance of the responsibilities set
 15 out in such section, particularly the identifica-
 16 tion of the sources of fiscal and other support
 17 for services for early intervention programs, as-
 18 signment of financial responsibility to the ap-
 19 propriate agency, and the promotion of the
 20 interagency agreements;

21 “(B) advise and assist the lead agency in
 22 the preparation of applications and amend-
 23 ments thereto;

24 “(C) advise and assist the State edu-
 25 cational agency regarding the transition of tod-

1 dlers with disabilities to preschool and other ap-
2 propriate services; and

3 “(D) prepare and submit an annual report
4 to the Governor and to the Secretary on the
5 status of early intervention programs for in-
6 fants and toddlers with disabilities and their
7 families operated within the State.

8 “(2) AUTHORIZED ACTIVITY.—The council may
9 advise and assist the lead agency and the State edu-
10 cational agency regarding the provision of appro-
11 priate services for children aged birth to 5, inclusive.

12 “(f) CONFLICT OF INTEREST.—No member of the
13 council shall cast a vote on any matter which would pro-
14 vide direct financial benefit to that member or otherwise
15 give the appearance of a conflict of interest under State
16 law.

17 **“SEC. 642. FEDERAL ADMINISTRATION.**

18 “Sections 616, 617, 618, and 620 shall, to the extent
19 not inconsistent with this part, apply to the program au-
20 thorized by this part, except that—

21 “(1) any reference in such sections to a State
22 educational agency shall be considered to be a ref-
23 erence to a State’s lead agency established or des-
24 ignated under section 635(a)(8);

1 “(2) any reference in such sections to a local
2 educational agency, educational service agency, or a
3 State agency shall be considered to be a reference to
4 an early intervention service provider under this
5 part; and

6 “(3) any reference to the education of children
7 with disabilities or the education of all children with
8 disabilities shall be considered to be a reference to
9 the provision of appropriate early intervention serv-
10 ices to infants and toddlers with disabilities.

11 **“SEC. 643. ALLOCATION OF FUNDS.**

12 “(a) RESERVATION OF FUNDS FOR TERRITORIES.—

13 “(1) IN GENERAL.—From the sums appro-
14 priated to carry out this part for any fiscal year, the
15 Secretary may reserve up to one percent for pay-
16 ments to Guam, American Samoa, the Virgin Is-
17 lands, and the Commonwealth of the Northern Mari-
18 ana Islands in accordance with their respective
19 needs.

20 “(2) CONSOLIDATION OF FUNDS.—The provi-
21 sions of Public Law 95–134, permitting the consoli-
22 dation of grants to the territories, shall not apply to
23 funds those areas receive under this part.

24 “(b) PAYMENTS TO INDIANS.—

1 “(1) IN GENERAL.—The Secretary shall, sub-
2 ject to this subsection, make payments to the Sec-
3 retary of the Interior to be distributed to tribes,
4 tribal organizations (as defined under section 4 of
5 the Indian Self-Determination and Education Assist-
6 ance Act), or consortia of the above entities for the
7 coordination of assistance in the provision of early
8 intervention services by the States to infants and
9 toddlers with disabilities and their families on res-
10 ervations served by elementary and secondary
11 schools for Indian children operated or funded by
12 the Department of the Interior. The amount of such
13 payment for any fiscal year shall be 1.25 percent of
14 the aggregate of the amount available to all States
15 under this part for such fiscal year.

16 “(2) ALLOCATION.—For each fiscal year, the
17 Secretary of the Interior shall distribute the entire
18 payment received under paragraph (1) by providing
19 to each tribe, tribal organization, or consortium an
20 amount based on the number of infants and toddlers
21 residing on the reservation as determined annually
22 divided by the total of such children served by all
23 tribes, tribal organizations, or consortia.

24 “(3) INFORMATION.—To receive a payment
25 under this paragraph, the tribe, tribal organization,

1 or consortia shall submit such information to the
2 Secretary of the Interior as is needed to determine
3 the amounts to be allocated under paragraph (2).

4 “(4) USE OF FUNDS.—The funds received by a
5 tribe, tribal organization, or consortia shall be used
6 to assist States in child find, screening, and other
7 procedures for the early identification of Indian chil-
8 dren under 3 years of age and for parent training.
9 Such funds may also be used to provide early inter-
10 vention services in accordance with this part. Such
11 activities may be carried out directly or through con-
12 tracts or cooperative agreements with the BIA, local
13 educational agencies, and other public or private
14 nonprofit organizations. The tribe, tribal organiza-
15 tion, or consortia is encouraged to involve Indian
16 parents in the development and implementation of
17 these activities. The above entities shall, as appro-
18 priate, make referrals to local, State, or Federal en-
19 tities for the provision of services or further diag-
20 nosis.

21 “(5) REPORTS.—To be eligible to receive a
22 grant under paragraph (2), a tribe, tribal organiza-
23 tion, or consortia shall make a biennial report to the
24 Secretary of the Interior of activities undertaken
25 under this subsection, including the number of con-

1 tracts and cooperative agreements entered into, the
2 number of children contacted and receiving services
3 for each year, and the estimated number of children
4 needing services during the 2 years following the
5 year in which the report is made. The Secretary of
6 the Interior shall include a summary of this informa-
7 tion on a biennial basis to the Secretary of Edu-
8 cation along with such other information as required
9 under section 611(f)(3)(D). The Secretary of Edu-
10 cation may require any additional information from
11 the Secretary of the Interior.

12 “(6) PROHIBITED USES OF FUNDS.—None of
13 the funds under this subsection may be used by the
14 Secretary of the Interior for administrative pur-
15 poses, including child count, and the provision of
16 technical assistance.

17 “(c) STATE ALLOTMENTS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graphs (2), (3), and (4), from the funds remaining
20 for each fiscal year after the reservation and pay-
21 ments under subsections (a) and (b), the Secretary
22 shall first allot to each State an amount that bears
23 the same ratio to the amount of such remainder as
24 the number of infants and toddlers in the State

1 bears to the number of infants and toddlers in all
2 States.

3 “(2) MINIMUM ALLOTMENTS.—Except as pro-
4 vided in paragraphs (3) and (4), no State shall re-
5 ceive an amount under this section for any fiscal
6 year that is less than the greatest of—

7 “(A) one-half of one percent of the remain-
8 ing amount described in paragraph (1); or

9 “(B) \$500,000.

10 “(3) SPECIAL RULE FOR 1997 THROUGH 1999.—

11 “(A) IN GENERAL.—Except as provided in
12 paragraph (4), no State may receive an amount
13 under this section for any of the fiscal years
14 1997 through 1999 that is less than the sum of
15 the amount such State received for fiscal year
16 1994 under—

17 “(i) part H (as in effect on the day
18 before the date of the enactment of the
19 IDEA Improvement Act of 1996); and

20 “(ii) subpart 2 of part D of chapter 1
21 of title I of the Elementary and Secondary
22 Education Act of 1965 (as in effect on the
23 day before the date of the enactment of the
24 Improving America’s Schools Act of 1994)

1 for children with disabilities under 3 years
2 of age.

3 “(B) EXCEPTION.—If, for fiscal year 1998
4 or 1999, the number of infants and toddlers in
5 a State, as determined under paragraph (1), is
6 less than the number of infants and toddlers so
7 determined for fiscal year 1994, the amount de-
8 termined under subparagraph (A) for the State
9 shall be reduced by the same percentage by
10 which the number of such infants and toddlers
11 so declined.

12 “(4) RATABLE REDUCTION.—

13 “(A) IN GENERAL.—If the sums made
14 available under this part for any fiscal year are
15 insufficient to pay the full amounts that all
16 States are eligible to receive under this sub-
17 section for such year, the Secretary shall rat-
18 ably reduce the allocations to such States for
19 such year.

20 “(B) ADDITIONAL FUNDS.—If additional
21 funds become available for making payments
22 under this subsection for a fiscal year, alloca-
23 tions that were reduced under subparagraph
24 (A) shall be increased on the same basis as
25 such allocations were reduced.

1 “(5) DEFINITIONS.—For the purpose of this
2 subsection—

3 “(A) the terms ‘infants’ and ‘toddlers’
4 mean children under 3 years of age; and

5 “(B) the term ‘State’ means each of the 50
6 States, the District of Columbia, and the Com-
7 monwealth of Puerto Rico.

8 “(d) REALLOTMENT OF FUNDS.—If a State elects
9 not to receive its allotment under subsection (c), the Sec-
10 retary shall reallocate, among the remaining States, amounts
11 from such State in accordance with such subsection.

12 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

13 “For the purpose of carrying out this part, there are
14 authorized to be appropriated such sums as may be nec-
15 essary for each of the fiscal years 1997 through 2001.

16 **“PART D—NATIONAL ACTIVITIES TO IMPROVE**
17 **EDUCATION OF CHILDREN WITH DISABILITIES**

18 **“SEC. 651. PURPOSE OF PART.**

19 “The purpose of this part is to support national,
20 State, and local activities aimed at improving educational,
21 early intervention, and transitional services and opportuni-
22 ties for children with disabilities.

23 **“SEC. 652. ELIGIBILITY FOR FINANCIAL ASSISTANCE.**

24 “No State, State educational agency, local edu-
25 cational agency, educational service agency, or other pub-

1 lie institution or agency may receive a grant, contract, or
2 cooperative agreement under this part which relates exclu-
3 sively to programs, projects, and activities for children
4 aged 3 to 5, inclusive, unless the State, or, in the case
5 of an agency or institution, the State in which the agency
6 or institution is located, is eligible to receive a grant under
7 section 619.

8 **“SEC. 653. COMPREHENSIVE PLAN.**

9 “(a) IN GENERAL.—The Secretary shall develop and
10 implement a comprehensive plan for ongoing activities
11 conducted by the Secretary under this part.

12 “(b) USE OF KNOWLEDGE IN DEVELOPING PLAN.—
13 To the maximum extent appropriate, the Secretary shall
14 ensure that the plan is based upon the knowledge gained
15 from research on practices that have been proven effective
16 in improving the achievement of children with disabilities.

17 “(c) CONSULTATION.—In developing the plan, the
18 Secretary shall consult the following persons:

19 “(1) Individuals with disabilities.

20 “(2) Parents of children with disabilities.

21 “(3) Representatives of State and local edu-
22 cational agencies and educational service agencies.

23 “(4) Private schools.

24 “(5) Institutions of higher education.

25 “(6) Other Federal agencies.

1 “(7) The National Council on Disability.

2 “(8) National organizations with an interest in,
3 and expertise in, providing services to children with
4 disabilities and their families.

5 “(9) Any other professionals determined appro-
6 priate by the Secretary.

7 “(d) DEADLINE.—The plan shall be developed not
8 later than the date that is 12 months after the date of
9 the enactment of the IDEA Improvement Act of 1996.

10 **“SEC. 654. PEER REVIEW.**

11 “(a) IN GENERAL.—The Secretary shall use a panel
12 of experts who are competent, by virtue of their training,
13 expertise, or experience, to evaluate an application under
14 this part that requests more than \$75,000 in Federal fi-
15 nancial assistance.

16 “(b) COMPOSITION OF PANEL.—A majority of a
17 panel described in subsection (a) shall be composed of in-
18 dividuals who are not employees of the Federal Govern-
19 ment.

20 “(c) PAYMENT OF FEES AND EXPENSES OF CERTAIN
21 MEMBERS.—The Secretary may use available funds ap-
22 propriated to carry out this part to pay the expenses and
23 fees of panel members who are not employees of the Fed-
24 eral Government.

1 **“SEC. 655. ELIGIBLE APPLICANTS.**

2 “Except as otherwise provided in this part, the per-
3 sons who, and the agencies that, may apply for receipt
4 of grants, contracts, or cooperative agreements under this
5 part are the following:

6 “(1) Institutions of higher education.

7 “(2) State educational agencies.

8 “(3) Local educational agencies.

9 “(4) Educational service agencies.

10 “(5) Other public agencies.

11 “(6) Private nonprofit organizations.

12 “(7) Indian tribes and tribal organizations (as
13 defined under section 4 of the Indian Self-Deter-
14 mination and Education Assistance Act).

15 “(8) For-profit organizations.

16 **“SEC. 656. APPLICANT AND RECIPIENT RESPONSIBILITIES.**

17 “(a) GENERAL REQUIREMENTS ON APPLICANTS AND
18 RECIPIENTS.—The Secretary may not make a grant to,
19 or enter into a contract or cooperative agreement with,
20 a person or agency under this part unless—

21 “(1) the person or agency involves individuals
22 with disabilities, and parents of children with dis-
23 abilities, in planning, implementing, and evaluating
24 activities conducted under the grant, contract, or
25 agreement;

1 “(2) the person or agency, where appropriate,
2 evaluates the potential for replication and wide-
3 spread adoption of such activities; and

4 “(3) the person or agency prepares their find-
5 ings and work product in a format useful for a spe-
6 cific audience specified by the Secretary, such as
7 parents, administrators, teachers, early intervention
8 personnel, related services personnel, or individuals
9 with disabilities.

10 “(b) ADDITIONAL REQUIREMENTS IMPOSED AT DIS-
11 CRETION OF SECRETARY.—The Secretary may require
12 that a person who, or agency that, is awarded a grant,
13 contract, or cooperative agreement under this part—

14 “(1) assume a portion of the cost of carrying
15 out the grant, contract, or agreement;

16 “(2) disseminate the findings and work product
17 of the person or agency; and

18 “(3) collaborate with other such persons and
19 agencies.

20 **“SEC. 657. INDIRECT COSTS.**

21 “The Secretary—

22 “(1) may not permit any recipient of Federal
23 funds under this part to use more than 25 percent
24 of such funds for indirect costs; and

1 “(2) may further limit the extent to which any
2 such recipient may use such funds for such costs.

3 **“SEC. 658. PROGRAM EVALUATION.**

4 “The Secretary may use funds appropriated to carry
5 out this part to evaluate any activity carried out under
6 this part.

7 **“Subpart 1—National Research and Improvement**
8 **Activities**

9 **“SEC. 661. GENERAL AUTHORITY TO MAKE AWARDS.**

10 “The Secretary may make grants to, and enter into
11 contracts and cooperative agreements with, eligible entities
12 to carry out research and improvement activities that fur-
13 ther the purpose of this part and are consistent with the
14 priorities established under section 662.

15 **“SEC. 662. PRIORITIES.**

16 “(a) IN GENERAL.—In making awards under this
17 subpart, the Secretary may, without regard to the rule
18 making procedures under section 553 of title 5, United
19 States Code, limit such awards to, or otherwise give prior-
20 ity to—

21 “(1) projects that address the improvement of
22 the academic performance of children with disabil-
23 ities;

24 “(2) projects that address one or more—

25 “(A) age ranges;

1 “(B) disabilities;

2 “(C) grades in school;

3 “(D) types of educational placements or
4 early intervention environments;

5 “(E) types of services; or

6 “(F) content areas such as reading;

7 “(3) projects that address the needs of children
8 based on the severity of their disability;

9 “(4) projects that address the needs of—

10 “(A) low-achieving students;

11 “(B) underserved populations;

12 “(C) children from low-income families;

13 “(D) children with limited English pro-
14 ficiency;

15 “(E) unserved and underserved areas;

16 “(F) particular types of geographic areas,
17 such as inner-city or rural areas; or

18 “(G) institutionalized children in juvenile
19 and adult correctional institutions;

20 “(5) any activity that is expressly authorized in
21 this title;

22 “(6) a large-scale longitudinal study designed to
23 provide information on the long-term impact of edu-
24 cation agency disciplinary procedures on children
25 with disabilities;

1 “(7) research and development projects includ-
2 ing—

3 “(A) projects that advance knowledge
4 about—

5 “(i) teaching and learning practices,
6 and assessment techniques, instruments,
7 and strategies, including behavioral strate-
8 gies, that lead to improved results for chil-
9 dren with disabilities;

10 “(ii) the developmental and learning
11 characteristics of children with disabilities
12 in a manner that will improve the design
13 and effectiveness of interventions and in-
14 struction; or

15 “(iii) the coordination of education
16 with health and social services;

17 “(B) large-scale longitudinal studies de-
18 signed to produce information on the long-term
19 impact of early intervention and education on
20 results for individuals with disabilities;

21 “(C) model demonstration projects to
22 apply and test research findings in typical serv-
23 ice settings to determine the usability, effective-
24 ness, and general applicability of such research
25 findings in such areas as improving instruc-

1 tional methods, curricula, and tools such as
2 textbooks, media, and other materials; and

3 “(D) projects which apply research and
4 other knowledge to improve educational results
5 for children with disabilities by—

6 “(i) synthesizing useful research and
7 educational products;

8 “(ii) ensuring that such research and
9 products are in appropriate formats for
10 distribution to administrators, teachers,
11 parents, and individuals with disabilities;

12 or

13 “(iii) making such research and prod-
14 ucts available through libraries, electronic
15 networks, parent training projects, and
16 other information sources, including the
17 National Information Dissemination Sys-
18 tem under part D of title IX of Public Law
19 103–227;

20 “(8) projects which provide technical assistance
21 to—

22 “(A) States—

23 “(i) to link States to other technical
24 assistance resources, including special and
25 general education resources; or

1 “(ii) in gaining access to information,
2 including information on research and best
3 practices; or

4 “(B) State educational agencies, State lead
5 agencies serving infants and toddlers with dis-
6 abilities under part C, and other organizations
7 and agencies that play a critical role in provid-
8 ing for the participation of children with dis-
9 abilities in State and local assessments;

10 “(9) activities to produce, and promote the use
11 of, knowledge to address the special needs of chil-
12 dren who have a high likelihood of needing special
13 education and related services in order to reduce,
14 through early intervention, the need for special edu-
15 cation services later in life;

16 “(10) educational media activities including—

17 “(A) through September 30, 1998, video
18 description, open captioning, or closed caption-
19 ing;

20 “(B) video description, open captioning, or
21 closed captioning of educational, news, and in-
22 formational materials;

23 “(C) through September 30, 1998, dis-
24 tribution of captioned and described materials
25 and videos;

1 “(D) distribution of captioned and de-
2 scribed educational, news, and informational
3 materials and videos; and

4 “(E) recording free educational materials,
5 including textbooks, for visually impaired and
6 print-disabled students in elementary, second-
7 ary, post-secondary, and graduate schools; and

8 “(11) projects to assist institutions of higher
9 education in appropriately serving students with dis-
10 abilities, including deaf students.

11 “(b) DEFINITION.—As used in this section, the term
12 ‘low-incidence disability’ means—

13 “(1) a visual impairment, a hearing impair-
14 ment, or simultaneous visual and hearing impair-
15 ments;

16 “(2) a significant cognitive impairment; or

17 “(3) any impairment for which a small number
18 of personnel, with highly specialized skills and
19 knowledge, are needed nationwide in order for all
20 children with disabilities who have the impairment to
21 receive early intervention services or a free appro-
22 priate public education.

23 “(c) REPORT.—If the Secretary awards a grant, con-
24 tract, or cooperative agreement under this subpart prior
25 to February 1, 1998 with respect to an educational media

1 activity described in subparagraph (A) or (C) of sub-
2 section (a)(10), the Secretary, after consulting with the
3 chairman of the Federal Communications Commission,
4 shall submit to the Committee on Economic and Edu-
5 cational Opportunities of the House of Representatives
6 and the Committee on Labor and Human Resources of
7 the Senate, not later than April 15, 1998, a report on the
8 progress that the Federal Communications Commission is
9 making towards meeting the requirements imposed on the
10 Commission under section 713 of the Communications Act
11 of 1934 (47 U.S.C. 613).

12 **“SEC. 663. NATIONAL ASSESSMENT.**

13 “(a) PURPOSE OF ASSESSMENT.—The Secretary
14 shall carry out a national assessment of activities carried
15 out with Federal funds under this title in order—

16 “(1) to determine the effectiveness of the title
17 in achieving the purposes of the title;

18 “(2) to provide information to the President,
19 the Congress, the States, local educational agencies,
20 and the public on how to implement the title more
21 effectively; and

22 “(3) to provide the President and the Congress
23 with information that will be useful in developing
24 legislation to achieve the purposes of this title more
25 effectively.

1 “(b) CONSULTATION.—The Secretary shall plan, re-
2 view, and conduct the national assessment under this sec-
3 tion in consultation with researchers, State practitioners,
4 local practitioners, parents of children with disabilities, in-
5 dividuals with disabilities, and other appropriate individ-
6 uals.

7 “(c) SCOPE OF ASSESSMENT.—The national assess-
8 ment shall examine how well schools, local educational
9 agencies, States, other recipients of assistance under this
10 title, and the Secretary are achieving the purposes of this
11 title, including—

12 “(1) the performance of children with disabil-
13 ities in general scholastic activities and assessments
14 as compared to nondisabled children;

15 “(2) providing for the participation of children
16 with disabilities in the general education curriculum;

17 “(3) helping children with disabilities make suc-
18 cessful transitions from—

19 “(A) early intervention services to pre-
20 school education;

21 “(B) preschool education to elementary
22 school; and

23 “(C) secondary school to adult life;

24 “(4) placing and serving children with disabil-
25 ities, including children from underserved popu-

1 lations, in the least restrictive environment appro-
2 priate;

3 “(5) preventing children with disabilities, espe-
4 cially children with emotional disturbances and spe-
5 cific learning disabilities, from dropping out of
6 school;

7 “(6) assessing the use of disciplinary measures,
8 and the effect of such use, with children with dis-
9 abilities as compared to nondisabled children;

10 “(7) coordinating services provided under this
11 title with each other, with other educational and
12 pupil services (including preschool services), and
13 with health and social services funded from other
14 sources;

15 “(8) addressing the participation of parents of
16 children with disabilities in the education of their
17 children; and

18 “(9) resolving disagreements between education
19 personnel and parents through activities such as me-
20 diation.

21 “(d) INTERIM AND FINAL REPORTS.—The Secretary
22 shall submit to the President and the Congress—

23 “(1) an interim report that summarizes the pre-
24 liminary findings of the assessment not later than
25 October 1, 1998; and

1 “(2) a final report of the findings of the assess-
2 ment not later than October 1, 2000.

3 **“SEC. 664. AUTHORIZATION OF APPROPRIATIONS.**

4 “(a) IN GENERAL.—There are authorized to be ap-
5 propriated to carry out this subpart such sums as may
6 be necessary for each of the fiscal years 1997 through
7 2001.

8 “(b) MINIMUM AMOUNTS.—Subject to subsection (c),
9 the Secretary shall ensure that, for each fiscal year, at
10 least the following amounts are provided under this sub-
11 part to address the following needs:

12 “(1) \$12,832,000 to address the educational,
13 related services, transitional, and early intervention
14 needs of children with deaf-blindness.

15 “(2) \$4,000,000 to address the postsecondary,
16 vocational, technical, continuing, and adult edu-
17 cation needs of individuals with deafness.

18 “(c) RATABLE REDUCTION.—If the total amount ap-
19 propriated to carry out this subpart for any fiscal year
20 is less than \$135,600,000, the amounts listed in sub-
21 section (b) shall be ratably reduced.

22 **“Subpart 2—Professional Development**

23 **“SEC. 671. PURPOSE.**

24 “The purpose of this subpart is to help ensure that—

1 “(1) personnel responsible for serving children
2 with disabilities, including general and special edu-
3 cation personnel, related services personnel, and
4 early intervention personnel, have the knowledge and
5 skills necessary to help such children—

6 “(A) meet developmental goals and, to the
7 maximum extent possible, those challenging ex-
8 pectations that have been established for all
9 children; and

10 “(B) be prepared to lead productive, inde-
11 pendent adult lives to the maximum extent pos-
12 sible;

13 “(2) there are adequate numbers of such per-
14 sonnel to meet the needs of children with disabilities;
15 and

16 “(3) the skills and knowledge of personnel re-
17 sponsible for serving children with disabilities reflect
18 the best practices, as determined through research
19 and experience, particularly with respect to the in-
20 clusion of children with disabilities in the regular
21 education environment.

22 **“SEC. 672. FINDING.**

23 “The Congress finds that the conditions noted in
24 paragraphs (7) through (10) of section 601(c) can be
25 greatly improved by providing opportunities for the full

1 participation of minorities through the implementation of
2 the following recommendations:

3 “(1) Implementation of a policy to mobilize the
4 Nation’s resources to prepare minorities for careers
5 in special education and related services.

6 “(2) Focusing such policy on—

7 “(A) the recruitment of minorities into
8 teaching; and

9 “(B) financially assisting Historically
10 Black Colleges and Universities and other insti-
11 tutions of higher education (whose minority stu-
12 dent enrollment is at least 25 percent) to pre-
13 pare students for special education and related
14 service careers.

15 **“SEC. 673. NATIONAL ACTIVITIES.**

16 “(a) PROGRAM AUTHORIZED.—The Secretary may
17 make grants to, and enter into contracts and cooperative
18 agreements with, eligible entities to support activities of
19 national significance that—

20 “(1) have broad applicability; and

21 “(2) will help ensure that the purpose of this
22 subpart is met.

23 “(b) AUTHORIZED ACTIVITIES.—In carrying out this
24 section, the Secretary may support any activity that is
25 consistent with subsection (a), including—

1 “(1) the development, evaluation, demonstra-
2 tion, or dissemination of effective personnel prepara-
3 tion practices for personnel to work with children
4 with disabilities;

5 “(2) promoting the transferability of licensure
6 and certification of teachers and administrators
7 among State and local jurisdictions;

8 “(3) developing and disseminating models that
9 prepare teachers with strategies, including behav-
10 ioral management techniques, for addressing the
11 conduct of children with disabilities that impedes
12 their learning and that of others in the classroom;
13 and

14 “(4) supporting Historically Black Colleges and
15 Universities and institutions of higher education
16 with minority enrollments of at least 25 percent for
17 the purpose of preparing personnel.

18 **“SEC. 674. PROFESSIONAL DEVELOPMENT FOR PERSONNEL**
19 **SERVING LOW-INCIDENCE POPULATIONS.**

20 “(a) PROGRAM AUTHORIZED.—The Secretary may
21 make grants to, and enter into contracts and cooperative
22 agreements with, eligible entities to meet the purpose of
23 this subpart by supporting preparation for personnel who
24 will provide educational and related services to children
25 with low-incidence disabilities and personnel who will pro-

1 vide early intervention services to infants and toddlers
2 with disabilities.

3 “(b) AUTHORIZED ACTIVITIES.—

4 “(1) IN GENERAL.—Individuals who may be
5 prepared pursuant to this section include personnel
6 who—

7 “(A) are currently prepared in the fields of
8 educational, related, or early intervention serv-
9 ices; and

10 “(B) are studying—

11 “(i) to obtain degrees, certification, li-
12 censure, or endorsements in one or more of
13 such fields; or

14 “(ii) to meet competency requirements
15 in one or more of such fields.

16 “(2) SCHOLARSHIPS.—The Secretary may in-
17 clude funds for scholarships, with necessary stipends
18 and allowances, in awards under this section.

19 “(c) APPLICATIONS.—Any application for assistance
20 under this section shall propose to provide preparation
21 that addresses a significant need, as shown by letters from
22 one or more States stating that the State—

23 “(1) intends to accept successful completion of
24 the proposed personnel preparation as meeting State
25 personnel standards for serving children with low-in-

1 cidence disabilities, or for serving infants and tod-
2 dlers with disabilities; and

3 “(2) needs personnel in the area or areas in
4 which the applicant proposes to provide preparation,
5 as identified in the State’s comprehensive system of
6 personnel development under part B or C, or in the
7 State’s State improvement plan under subpart 3.

8 “(d) DEFINITION.—For purposes of this section, the
9 term ‘low-incidence disability’ has the meaning given such
10 term in section 662(b).

11 **“SEC. 675. LEADERSHIP PERSONNEL.**

12 “(a) PROGRAM AUTHORIZED.—The Secretary may
13 make grants to, and enter into contracts and cooperative
14 agreements with, eligible entities to meet the purpose of
15 this subpart by preparing educational, related service, and
16 early intervention leadership personnel (including teacher-
17 preparation faculty, administrators, researchers, super-
18 visors, and principals) so that they are prepared to help
19 children with disabilities—

20 “(1) meet developmental goals and, to the max-
21 imum extent possible, those challenging expectations
22 that have been established for all children; and

23 “(2) be prepared to lead productive, independ-
24 ent adult lives to the maximum extent possible.

25 “(b) AUTHORIZED ACTIVITIES.—

1 “(1) IN GENERAL.—In carrying out this sec-
2 tion, the Secretary may support any activity that is
3 consistent with subsection (a), including—

4 “(A) preparation of personnel at the ad-
5 vanced graduate, doctoral, or post-doctoral lev-
6 els; and

7 “(B) professional development of leader-
8 ship personnel.

9 “(2) SCHOLARSHIPS.—The Secretary may in-
10 clude funds for scholarships, with necessary stipends
11 and allowances, in awards under this section.

12 “(c) PREFERENCES.—In making awards under this
13 section, the Secretary shall give preference to projects at
14 institutions of higher education that have successfully in-
15 tegrated the professional development of general and spe-
16 cial education personnel.

17 **“SEC. 676. SERVICE OBLIGATION.**

18 “Each application for funds under section 674 or 675
19 shall include an assurance that the applicant will ensure
20 that individuals who are prepared under the proposed
21 project will subsequently perform work related to their
22 preparation or repay all or part of the cost of such prepa-
23 ration.

1 **“SEC. 677. OUTREACH.**

2 “(a) PLAN FOR OUTREACH SERVICES.—The Sec-
3 retary shall develop a plan for providing outreach services
4 to the entities and populations described in subsection (b)
5 in order to increase the participation of such entities and
6 populations in competitions for grants, contracts, and co-
7 operative agreements under this subpart.

8 “(b) ENTITIES AND POPULATIONS DESCRIBED.—
9 The entities and populations referred to in subsection (a)
10 are—

11 “(1) Historically Black Colleges and Univer-
12 sities and other institutions of higher education
13 whose minority student enrollment is at least 25
14 percent;

15 “(2) eligible institutions, as defined in section
16 312 of the Higher Education Act of 1965;

17 “(3) nonprofit and for-profit agencies at least
18 51 percent owned or controlled by one or more mi-
19 nority individuals; and

20 “(4) underrepresented populations.

21 “(c) FUNDING.—For the purpose of implementing
22 the plan required under subsection (a), the Secretary
23 shall, for each of the fiscal years 1997 through 2002, ex-
24 pend 1 percent of the funds appropriated for the fiscal
25 year involved for carrying out this subpart.

1 “(d) DILIGENCE.—The Secretary shall exercise the
2 utmost authority, resourcefulness, and diligence of the
3 Secretary to meet the requirements of this section.

4 “(e) REPORT.—Not later than January 31 of each
5 year, beginning with fiscal year 1997 and ending with fis-
6 cal year 2002, the Secretary shall submit to the Congress
7 a final report on the progress toward meeting the goals
8 of this section during the preceding fiscal year. The report
9 shall include—

10 “(1) a full explanation of any progress toward
11 meeting the goals of this section; and

12 “(2) a plan to meet the goals, if necessary.

13 “(f) UNDERREPRESENTED POPULATIONS DE-
14 FINED.—For purposes of this section, the term ‘underrep-
15 resented populations’ means populations such as minori-
16 ties, the poor, individuals with limited English proficiency,
17 and individuals with disabilities.

18 **“Subpart 3—State Program Improvement Grants for**
19 **Children with Disabilities**

20 **“SEC. 681. PURPOSE.**

21 “The purpose of this subpart is to assist States in
22 reforming and improving their systems for providing edu-
23 cational and early intervention services, particularly their
24 systems for professional development, to improve the
25 achievement of children with disabilities.

1 **“SEC. 682. ELIGIBILITY AND COLLABORATIVE PROCESS.**

2 “(a) ELIGIBLE APPLICANTS.—A State may apply for
3 a grant under this subpart for a grant period that is not
4 less than one year, but is not greater than 4 years.

5 “(b) CERTIFICATION THAT COLLABORATIVE PROC-
6 ESS HAS BEEN USED.—A State that desires to receive
7 a grant under this subpart shall certify to the Secretary
8 that a collaborative process with persons described in sub-
9 section (c) has been used in developing the State improve-
10 ment plan described in section 683.

11 “(c) COLLABORATIVE PROCESS PARTICIPANTS.—

12 “(1) REQUIRED PARTICIPANTS.—The collabo-
13 rative process referred to in subsection (b) is a State
14 process for making decisions which includes as par-
15 ticipants, at a minimum, the Governor of the State
16 and representatives, appointed by such Governor,
17 of—

18 “(A) parents of children with disabilities;

19 “(B) parents of nondisabled children;

20 “(C) individuals with disabilities;

21 “(D) organizations representing individuals
22 with disabilities and their parents;

23 “(E) community-based and other nonprofit
24 organizations related to the education and em-
25 ployment of individuals with disabilities;

1 “(F) the lead State agency official or offi-
2 cials for part C;

3 “(G) local educational agencies;

4 “(H) general and special education teach-
5 ers;

6 “(I) the State educational agency;

7 “(J) the State advisory panel established
8 under part B; and

9 “(K) the State interagency coordinating
10 council established under part C.

11 “(2) OPTIONAL PARTICIPANTS.—The collabo-
12 rative process may include, at the Governor’s discre-
13 tion, representatives, appointed by the Governor,
14 of—

15 “(A) individuals knowledgeable about voca-
16 tional education;

17 “(B) the State agency for higher edu-
18 cation;

19 “(C) institutions of higher education;

20 “(D) schools of education;

21 “(E) the State vocational rehabilitation
22 agency;

23 “(F) public agencies with jurisdiction in
24 the areas of health, mental health, social serv-
25 ices, and juvenile justice; and

1 “(G) any other individuals designated by
2 the Governor.

3 **“SEC. 683. STATE IMPROVEMENT PLANS.**

4 “(a) IN GENERAL.—A State that desires to receive
5 a grant under this subpart shall submit to the Secretary
6 a State improvement plan that is integrated, to the maxi-
7 mum extent possible, with State plans under the Elemen-
8 tary and Secondary Education Act of 1965 and the Reha-
9 bilitation Act of 1973, as appropriate.

10 “(b) DETERMINING CHILD AND PROGRAM NEEDS.—

11 “(1) IN GENERAL.—Each State improvement
12 plan shall identify those critical aspects of early
13 intervention, general education, and special edu-
14 cation programs (including professional development,
15 based on an assessment of State and local needs)
16 that must be improved to enable children with dis-
17 abilities to meet the goals established by the State
18 under section 612(a)(14).

19 “(2) REQUIRED ANALYSES.—To meet the re-
20 quirement of paragraph (1), the State improvement
21 plan shall include at least—

22 “(A) an analysis of all information, reason-
23 ably available to the State, on the performance
24 of children with disabilities in the State, includ-
25 ing—

1 “(i) their performance on State as-
2 sessments and other performance indica-
3 tors established for all children, including
4 drop-out rates and graduation rates;

5 “(ii) their participation in postsecond-
6 ary education and employment; and

7 “(iii) how their performance on the
8 assessments and indicators described in
9 clause (i) compares to that of non-disabled
10 children;

11 “(B) an analysis of State and local needs
12 for professional development for personnel to
13 serve children with disabilities that includes, at
14 a minimum, relevant information on current
15 and anticipated personnel shortages, and on the
16 extent of certification or retraining necessary to
17 eliminate such shortages, that is based, to the
18 maximum extent possible, on existing assess-
19 ments of personnel needs; and

20 “(C) a summary of the information and
21 analysis provided by the State to the Secretary
22 under parts B and C on the effectiveness of the
23 State’s systems of early intervention, special
24 education, and general education in meeting the
25 needs of children with disabilities.

1 “(c) IMPROVEMENT STRATEGIES.—Each State im-
2 provement plan shall—

3 “(1) describe the strategies the State will use to
4 address the needs identified under subsection (b)(1),
5 including—

6 “(A) how it will hold school districts and
7 schools accountable for educational progress of
8 children with disabilities;

9 “(B) how it will provide technical assist-
10 ance to school districts and schools to improve
11 results for children with disabilities;

12 “(C) how it will address the identified
13 needs for in-service and pre-service preparation
14 to ensure that all personnel who work with chil-
15 dren with disabilities (including both profes-
16 sional and paraprofessional personnel who pro-
17 vide early intervention services, special edu-
18 cation, general education, or related services)
19 have the skills and knowledge necessary to meet
20 the needs of children with disabilities, including
21 a description of how—

22 “(i) the State will prepare general
23 education and special education personnel
24 with the content knowledge and collabo-
25 rative skills needed to meet the needs of

1 children with disabilities, including how the
2 State will work with other States on com-
3 mon certification criteria;

4 “(ii) the State will prepare profes-
5 sionals and paraprofessionals in the area of
6 early intervention with the content knowl-
7 edge and collaborative skills needed to
8 meet the needs of infants and toddlers
9 with disabilities;

10 “(iii) the State will work with institu-
11 tions of higher education and other entities
12 that prepare (on both a pre-service and an
13 in-service basis) personnel who work with
14 children with disabilities to ensure that
15 such institutions and entities develop the
16 capacity to support professional develop-
17 ment programs which reflect actual edu-
18 cation practices and techniques;

19 “(iv) the State’s requirements for li-
20 censure of teachers and administrators, in-
21 cluding certification and recertification,
22 will be modified to support an adequate
23 supply of personnel with the necessary
24 skills and knowledge (including, where ap-
25 propriate, strategies for developing recip-

1 rocal certification agreements and common
2 certification requirements with other
3 States); and

4 “(v) the State will work to develop
5 collaborative agreements with other States
6 for the joint support and development of
7 programs to prepare personnel for which
8 there is not sufficient demand within a sin-
9 gle State to justify support or development
10 of such a program of preparation;

11 “(D) how it will work in collaboration with
12 other States, particularly neighboring States, to
13 address the lack of uniformity and reciprocity
14 in the credentialing of teachers and other per-
15 sonnel;

16 “(E) strategies that will address systemic
17 problems identified in Federal compliance re-
18 views, including shortages of qualified person-
19 nel; and

20 “(F) how the State will assess, on a regu-
21 lar basis, the extent to which the strategies im-
22 plemented under this subpart have been effec-
23 tive; and

1 “(2) describe how the improvement strategies
2 under paragraph (1) will be coordinated with public
3 and private sector resources.

4 “(d) REPORTING PROCEDURES.—Each State that re-
5 ceives a grant under this subpart shall submit perform-
6 ance reports to the Secretary pursuant to a schedule to
7 be determined by the Secretary, but not more frequently
8 that annually.

9 “(e) PLAN APPROVAL.—The Secretary shall approve
10 a State improvement plan under this section if it—

11 “(1) meets the requirements of this part;

12 “(2) has been developed in accordance with the
13 requirements of section 682; and

14 “(3) in the opinion of the Secretary, has a rea-
15 sonable chance of achieving the purposes of the
16 grant.

17 “(f) PLAN AMENDMENTS.—

18 “(1) MODIFICATIONS MADE BY STATE.—Sub-
19 ject to paragraph (2), a plan submitted by a State
20 in accordance with this section shall remain in effect
21 until the State submits to the Secretary such modi-
22 fications as the State determines necessary. This
23 section shall apply to a modification to a plan to the
24 same extent and in the same manner as this section
25 applies to the original plan.

1 “(2) MODIFICATIONS REQUIRED BY SEC-
2 RETARY.—The Secretary may require a State to
3 amend its State improvement plan at any time as a
4 result of the Secretary’s compliance reviews under
5 parts B and C. The Secretary may not provide fur-
6 ther funding under this subpart to the State until
7 such amendments are made.

8 **“SEC. 684. USE OF FUNDS.**

9 “(a) IN GENERAL.—A State that receives a grant
10 under this subpart may use the grant to carry out any
11 activities that are described in the State improvement plan
12 and that are consistent with the purpose of this subpart.
13 Such activities may include the awarding of subgrants, but
14 only if the subgrants are made to local educational agen-
15 cies. Any such local educational agency may award sub-
16 grants to any person. Such activities may also include the
17 awarding of contracts to appropriate entities.

18 “(b) USE OF FUNDS FOR PROFESSIONAL DEVELOP-
19 MENT.—A State that receives a grant under this subpart
20 shall use not less than 75 percent of the funds it receives
21 under the grant for any fiscal year to ensure that there
22 is a sufficient supply of personnel who have the skills and
23 knowledge necessary to enable children with disabilities to
24 meet developmental goals and to meet the needs of such

1 children, including working with other States on common
 2 certification criteria.

3 “(c) GRANTS TO TERRITORIES.—The provisions of
 4 Public Law 95–134, permitting the consolidation of grants
 5 to the territories, shall not apply to funds received under
 6 this subpart.

7 **“SEC. 685. MINIMUM STATE ALLOTMENTS.**

8 “A State that receives a grant under this subpart
 9 shall receive an amount that is—

10 “(1) not less than \$200,000, in the case of the
 11 50 States, the District of Columbia, and the Com-
 12 monwealth of Puerto Rico; and

13 “(2) not less than \$40,000, in the case of a ter-
 14 ritory.

15 **“SEC. 686. AUTHORIZATION OF APPROPRIATIONS.**

16 “There are authorized to be appropriated to carry out
 17 this subpart such sums as may be necessary for each of
 18 the fiscal years 1997 through 2001.

19 **“Subpart 4—Parent Training**

20 **“SEC. 691. GRANTS FOR PARENT TRAINING AND INFORMA-**
 21 **TION CENTERS.**

22 “(a) PROGRAM AUTHORIZED.—The Secretary may
 23 make grants to, and enter into contracts and cooperative
 24 agreements with, parent organizations to support parent

1 training and information centers to carry out activities
2 under this subpart.

3 “(b) REQUIRED ACTIVITIES.—A parent training and
4 information center that receives assistance under this sec-
5 tion shall—

6 “(1) assist parents to understand the availabil-
7 ity of, and how effectively to use, procedural safe-
8 guards under this title, including the use of alter-
9 native methods of dispute resolution, such as medi-
10 ation;

11 “(2) serve the parents of children with the full
12 range of disabilities; and

13 “(3) annually report to the Secretary on—

14 “(A) the number of parents to whom it
15 provided information and training in the most
16 recently concluded fiscal year; and

17 “(B) the effectiveness of strategies used to
18 reach and serve parents of children with disabil-
19 ities, including underserved parents of children
20 with disabilities.

21 “(c) OPTIONAL ACTIVITIES.—A parent training and
22 information center that receives assistance under this sec-
23 tion may—

1 “(1) provide information to teachers and other
2 professionals who provide special education and re-
3 lated services to children with disabilities;

4 “(2) assist students with disabilities to under-
5 stand their rights and responsibilities under section
6 615(j) on reaching the age of majority; and

7 “(3) establish cooperative partnerships with
8 parent organizations, and other organizations assist-
9 ing families of children with disabilities, in the com-
10 munity.

11 “(d) APPLICATION REQUIREMENTS.—Each applica-
12 tion for assistance under this section shall identify with
13 specificity the special efforts that the applicant will under-
14 take to—

15 “(1) ensure that the needs for training and in-
16 formation of parents of underserved children with
17 disabilities in the area to be served are effectively
18 met; and

19 “(2) work with community-based organizations.

20 “(e) DISTRIBUTION OF FUNDS.—

21 “(1) INITIAL AWARDS.—

22 “(A) IN GENERAL.—The Secretary shall
23 make at least one award to a parent organiza-
24 tion in each State, unless the Secretary does
25 not receive an application from such an organi-

1 zation in each State of sufficient quality to war-
2 rant approval.

3 “(B) SELECTION REQUIREMENT.—The
4 Secretary shall select among applications sub-
5 mitted by parent organizations in a State in a
6 manner that ensures the most effective assist-
7 ance to parents, including parents in urban and
8 rural areas, in the State.

9 “(2) ADDITIONAL AWARDS.—

10 “(A) IN GENERAL.—The Secretary may
11 make additional awards to community-based
12 parent organizations in each State.

13 “(B) SELECTION REQUIREMENT.—The
14 Secretary may make additional awards in a
15 manner that ensures that parents of children
16 with disabilities in low-income, high-density,
17 and rural areas have access to parent training
18 and information centers that provide appro-
19 priate training and information.

20 **“SEC. 692. TECHNICAL ASSISTANCE FOR PARENT TRAINING**
21 **AND INFORMATION CENTERS.**

22 “(a) PROGRAM AUTHORIZED.—The Secretary may
23 provide technical assistance for developing, assisting, and
24 coordinating parent training and information programs

1 carried out by parent training and information centers re-
2 ceiving assistance under section 691.

3 “(b) AUTHORIZED ACTIVITIES.—The Secretary may
4 provide technical assistance to a parent training and infor-
5 mation center under this section in areas such as—

6 “(1) effective coordination of parent training ef-
7 forts;

8 “(2) dissemination of information;

9 “(3) evaluation by the center of itself;

10 “(4) promotion of the use of technology, includ-
11 ing assistive technology devices and assistive tech-
12 nology services;

13 “(5) reaching underserved populations;

14 “(6) including children with disabilities in gen-
15 eral education programs;

16 “(7) facilitation of transitions from—

17 “(A) early intervention services to pre-
18 school;

19 “(B) preschool to school; and

20 “(C) secondary school to postsecondary en-
21 vironments; and

22 “(8) promotion of alternative methods of dis-
23 pute resolution.

1 **“SEC. 693. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to carry out
3 this subpart such sums as may be necessary for each of
4 the fiscal years 1997 through 2001.”.

5 **TITLE II—MISCELLANEOUS**
6 **PROVISIONS**

7 **SEC. 201. AMENDMENT TO ESEA TO COORDINATE IDEA AND**
8 **SCHOOLWIDE PROGRAMS.**

9 Section 1114(a)(4) of the Elementary and Secondary
10 Education Act of 1965 (20 U.S.C. 6314(a)(4)) is amend-
11 ed—

12 (1) in subparagraph (A), by striking “Secretary
13 (other than formula or discretionary grant programs
14 under the Individuals with Disabilities Education
15 Act),” and inserting “Secretary,”; and

16 (2) in subparagraph (B), by inserting “special
17 education and related services under an individual-
18 ized education program, procedural safeguards,”
19 after “civil rights,”.

20 **SEC. 202. EFFECTIVE DATES.**

21 (a) PARTS A, B, AND C.—Except as provided in sub-
22 section (b), parts A, B, and C of the Individuals with Dis-
23 abilities Education Act, as amended by title I, shall take
24 effect on July 1, 1997.

1 (b) SECTION 605.—Section 605 of such Act, as
2 amended by title I, shall take effect upon the enactment
3 of this Act.

4 (c) PART D.—Part D of such Act, as amended by
5 title I, shall take effect on October 1, 1997.

6 **SEC. 203. REPEALERS.**

7 (a) PART I.—Part I of the Individuals with Disabil-
8 ities Education Act is hereby repealed.

9 (b) PART H.—Effective July 1, 1997, part H of such
10 Act is hereby repealed.

11 (c) PARTS E, F, AND G.—Effective October 1, 1997,
12 parts E, F, and G of such Act are hereby repealed.

Passed the House of Representatives June 10, 1996.

Attest:

ROBIN H. CARLE,

Clerk.

By LINDA NAVE,

Deputy Clerk.